

# **Workplace Relations Act 1996**

## **Act No. 86 of 1988 as amended**

This compilation was prepared on 16 December 2005  
taking into account amendments up to Act No. 153 of 2005

**Volume 2** includes: Table of Contents  
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The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
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## **Part IX—Entry and inspections by organisations**

### **285A Permits**

- (1) A Registrar may, on application by an organisation in accordance with the regulations, issue to an officer or employee of the organisation a permit in the form prescribed for the purposes of this section.
- (2) The permit:
  - (a) remains in force until it expires or is revoked under this section; and
  - (b) expires at the earlier of:
    - (i) 3 years after the day on which it was issued; or
    - (ii) the time at which the person to whom it was issued ceases to be an officer or employee of the organisation concerned.
- (3) A Registrar may, on application in accordance with the regulations, revoke the permit if he or she is satisfied that the person to whom it was issued has, in exercising powers under this Division, intentionally hindered or obstructed any employer or employee or otherwise acted in an improper manner.
- (4) An application for the revocation of a permit must set out the grounds on which the application is made.
- (5) A person to whom a permit has been issued under this section must, within 14 days after the expiry or revocation of the permit, return the permit to the Registrar.
- (6) If one or more permits issued to a person under this section have been revoked, the Registrar must take the fact into account when deciding whether to issue a further permit under this section to the person.

### **285B Investigating suspected breaches of Act etc.**

- (1) This section applies if a person who holds a permit in force under this Division suspects that a breach has occurred, or is occurring, of:

**Section 285B**

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- (a) this Act; or
  - (b) an award, an order of the Commission, or a certified agreement, that is in force and binds the organisation of which the person is an officer or employee.
- (2) For the purpose of investigating the suspected breach, the person may enter, during working hours, any premises where employees work who are members of the organisation of which the person is an officer or employee.
- (3) After entering the premises, the person may, for the purpose of investigating the suspected breach:
  - (a) require the employer of the employees to allow the person, during working hours, to inspect and, if the person wishes, to make copies of any of the following that are kept by the employer on the premises and are relevant to the suspected breach:
    - (i) any time sheets; or
    - (ii) any pay sheets; or
    - (iii) any other documents, other than an AWA, an ancillary document or a document that shows some or all of the content of an AWA or of an ancillary document; and
  - (b) during working hours, inspect or view any work, material, machinery, or appliance, that is relevant to the suspected breach; and
  - (c) during working hours, interview any employees who are:
    - (i) members of the organisation of which the person is an officer or employee; or
    - (ii) eligible to become members of that organisation; about the suspected breach.
- (4) For the purpose of investigating the suspected breach, the person may (regardless of whether the person exercises powers under subsection (2) or (3)) require the employer of the employees mentioned in subsection (2):
  - (a) to produce documents of the kind mentioned in any of subparagraphs (3)(a)(i) to (iii) at the premises at which the employees work or at some other agreed place; and
  - (b) if the documents are to be produced at the premises at which the employees work—to allow the person, during working hours, to enter the premises and:

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Section 285C

- (i) inspect the documents; and
  - (ii) if the person wishes to do so—make copies of the documents; and
  - (c) if the documents are to be produced at some other place—to allow the person, at an agreed time, to inspect the documents at that place and, if the person wishes to do so, to make copies of them.
- (5) In this section:

*ancillary document* has the same meaning as it has in Part VID.

**285C Discussions with employees**

- (1) Subject to subsections (2) and (3), a person who holds a permit in force under this Division may enter premises in which:
  - (a) work is being carried on to which an award applies that is binding on the organisation of which the person holding the permit is an officer or employee; and
  - (b) employees who are members, or eligible to become members, of that organisation work;for the purposes of holding discussions with any of those employees who wish to participate in those discussions.
- (2) The person may only enter the premises during working hours and may only hold the discussions during the employees' meal-time or other breaks.
- (3) The person may not enter premises if all of the following conditions are satisfied:
  - (a) no more than 20 employees are employed to work at the premises;
  - (b) all the employees at the premises are employed by an employer who is the holder of a conscientious objection certificate in force under section 180 of the Registration and Accountability of Organisations Schedule, that has been endorsed by the Registrar as provided in subsection (4);
  - (c) none of the employees employed at the premises is a member of an organisation.
- (4) Subject to subsection (5), a Registrar may, on the application of an employer, endorse a certificate issued to that employer under

**Section 285D**

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section 180 of the Registration and Accountability of Organisations Schedule if the Registrar is satisfied that the employer is a practising member of a religious society or order whose doctrines or beliefs preclude membership of an organisation or body other than the religious society or order of which the employer is a member.

- (5) A Registrar must not endorse a certificate under subsection (4) unless satisfied that, at the time application is made for endorsement, all of the employees employed by the applicant have agreed that the applicant's certificate should be endorsed.
- (6) An application under subsection (4) may be made at the time of an application under section 180 of the Registration and Accountability of Organisations Schedule or at any later time.
- (7) The endorsement of a Registrar under subsection (4) remains in force for the period that the certificate remains in force.

Note: A certificate issued under section 180 of the Registration and Accountability of Organisations Schedule remains in force for the period (not exceeding 12 months) specified in the certificate, but may be renewed. A Registrar's endorsement under subsection (4) does not remain in force when a certificate is renewed, but a new application for endorsement may be made.

**285D Conduct not authorised under sections 285B and 285C**

- (1) If:
  - (a) a person proposes to enter, or is on, premises in accordance with section 285B or 285C; and
  - (b) the occupier of the premises requires the person to show his or her permit;the person is not entitled under that section to enter or remain on the premises unless he or she shows the occupier the permit.
- (2) A person is only entitled to enter premises, and exercise powers, under section 285B or 285C if the person has given the occupier of the premises at least 24 hours' notice of the person's intention to do so.
- (3) A person is not, in exercising any powers under section 285B or 285C, entitled to enter any part of premises used for residential purposes, except with the permission of the occupier.

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Section 285E**285E Conduct in relation to sections 285B and 285C attracting civil penalties**

- (1) A person exercising powers under section 285B or 285C must not intentionally hinder or obstruct any employer or employee.
- (2) The occupier of premises must not refuse or unduly delay entry to the premises by a person entitled to enter the premises under section 285B or 285C.
- (3) An employer must not refuse or fail to comply with a requirement under paragraph 285B(3)(a) or subsection 285B(4).
- (4) A person must not otherwise intentionally hinder or obstruct a person exercising powers under section 285B or 285C. To avoid doubt, a failure to agree on a place or a time as mentioned in paragraph 285B(4)(a) or (c) does not constitute hindering or obstructing a person exercising such powers.

**285F Civil penalties**

- (1) In this section:

*eligible court* means:

- (a) the Federal Court of Australia; or
- (b) a District, County or Local Court; or
- (c) a magistrate's court.

*penalty provision* means subsection 285A(5) or 285E(1), (2), (3) or (4).

- (2) If a person contravenes a penalty provision, the contravention is not an offence. However, an eligible court may make an order imposing a penalty on a person who contravenes a penalty provision.
- (3) The penalty cannot be more than 300 penalty units for a body corporate or 60 penalty units in other cases.
- (4) An application for an order under subsection (2) may be made by any person.
- (5) An eligible court may grant an injunction requiring a person not to contravene, or to cease contravening, a penalty provision.

Section 285G

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**285G Powers of Commission**

- (1) In spite of section 89A, the Commission may exercise its powers under Part VI of this Act to prevent and settle industrial disputes about the operation of this Division, but must not make an order for that purpose conferring powers that are additional to, or inconsistent with, powers exercisable under this Division.
- (2) However the Commission does have power, for the purpose of preventing or settling the industrial dispute, to revoke a permit issued to a person under section 285A. If it does so, it may make any order that it considers appropriate, for the purpose of preventing or settling the industrial dispute, about the issue of any further permit to the person, or of any permit or further permit to any other person, under that section.

## **Part XA—Freedom of association**

### **Division 1—Preliminary**

#### **298A Objects of Part**

As well as the objects set out in section 3, this Part has these objects:

- (a) to ensure that employers, employees and independent contractors are free to join industrial associations of their choice or not to join industrial associations; and
- (b) to ensure that employers, employees and independent contractors are not discriminated against or victimised because they are, or are not, members or officers of industrial associations.

#### **298B Definitions**

- (1) In this Part, unless the contrary intention appears:

***bargaining services*** means services provided by (or on behalf of) an industrial association in relation to an agreement, or a proposed agreement, under Part VIB (including the negotiation, making, certification, operation, extension, variation or termination of the agreement).

***bargaining services fee*** means a fee (however described) payable:

- (a) to an industrial association; or
  - (b) to someone else in lieu of an industrial association;
- wholly or partly for the provision, or purported provision, of bargaining services, but does not include membership dues.

***conduct*** includes an omission.

***industrial action*** means:

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the work, where:

**Section 298B**

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- (i) the terms and conditions of the work are prescribed, wholly or partly, by an industrial instrument or an order of an industrial body; or
- (ii) the work is performed, or the practice is adopted, in connection with an industrial dispute; or
- (b) a ban, limitation or restriction on the performance of work, or acceptance of or offering for work, in accordance with the terms and conditions prescribed by an industrial instrument or by an order of an industrial body; or
- (c) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, that is adopted in connection with an industrial dispute; or
- (d) a failure or refusal by persons to attend for work or a failure or refusal to perform any work at all by persons who attend for work;

but does not include:

- (e) action by employees that is authorised or agreed to by the employer of the employees; or
- (f) action by an employer that is authorised or agreed to by or on behalf of employees of the employer; or
- (g) action by an employee if:
  - (i) the action was based on a reasonable concern by the employee about an imminent risk to his or her health or safety; and
  - (ii) the employee did not unreasonably fail to comply with a direction of his or her employer to perform other available work, whether at the same or another workplace, that was safe and appropriate for the employee to perform.

***industrial association*** means:

- (a) an association of employees and/or independent contractors, or an association of employers, that is registered or recognised as such an association (however described) under an industrial law; or
- (b) an association of employees and/or independent contractors a principal purpose of which is the protection and promotion of their interests in matters concerning their employment, or their interests as independent contractors, as the case requires; or



- (c) an association of employers a principal purpose of which is the protection and promotion of their interests in matters concerning employment and/or independent contractors; and includes a branch of such an association, and an organisation.

***industrial body*** means:

- (a) the Commission; or
- (b) a court or commission, however designated, exercising under an industrial law powers and functions corresponding to those conferred on the Commission by this Act; or
- (c) a court or commission, however designated, exercising under an industrial law powers and functions corresponding to those conferred on the Commission by the Registration and Accountability of Organisations Schedule.

***industrial dispute*** means:

- (a) an industrial dispute (including a threatened, impending or probable industrial dispute) that is about matters pertaining to the relationship between employers and employees; or
- (b) a situation that is likely to give rise to an industrial dispute of the kind referred to in paragraph (a); or
- (c) a dispute arising between 2 or more industrial associations, or within an industrial association, as to the rights, status or functions of members of the associations or association in relation to the employment of those members; or
- (d) a dispute arising between employers and employees, or between members of different industrial associations, as to the demarcation of functions of employees or classes of employees; or
- (e) a dispute about the representation under an industrial law of the industrial interests of employees by an industrial association of employees.

***industrial instrument*** means an award or agreement, however designated, that:

- (a) is made under or recognised by an industrial law; and
- (b) concerns the relationship between an employer and the employer's employees, or provides for the prevention or settlement of a dispute between an employer and the employer's employees.

**Section 298B**

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**industrial law** means this Act, the Registration and Accountability of Organisations Schedule or a law, however designated, of the Commonwealth or of a State or Territory that regulates the relationships between employers and employees or provides for the prevention or settlement of disputes between employers and employees.

**officer**, in relation to an industrial association, includes:

- (a) a delegate or other representative of the association; and
- (b) an employee of the association.

**organisation** includes a branch of an organisation.

- (2) For the purposes of this Part, action done by one of the following bodies or persons is taken to have been done by an industrial association:
  - (a) the committee of management of the industrial association;
  - (b) an officer or agent of the industrial association acting in that capacity;
  - (c) a member or group of members of the industrial association acting under the rules of the association;
  - (d) a member of the industrial association, who performs the function of dealing with an employer on behalf of the member and other members of the association, acting in that capacity.
- (3) Paragraphs (2)(c) and (d) do not apply if:
  - (a) a committee of management of the industrial association; or
  - (b) a person authorised by the committee; or
  - (c) an officer of the industrial association;has taken reasonable steps to prevent the action.
- (4) For the purposes of this Part:
  - (a) conduct is capable of constituting industrial action even if the conduct relates to part only of the duties that persons are required to perform in the course of their employment; and
  - (b) a reference to industrial action includes a reference to a course of conduct consisting of a series of industrial actions.
- (5) It is declared that a reference in this Part, or in regulations made for the purposes of this Part, to an independent contractor is not confined to a natural person.

## **Division 2—Conduct to which this Part applies**

### **298C Application**

This Part (except Divisions 6 and 7) applies only to the extent provided in this Division.

### **298D Organisations**

This Part applies to:

- (a) conduct by an organisation; and
- (b) conduct by an officer of an organisation acting in that capacity; and
- (c) conduct carried out with a purpose or intent relating to a person's membership or non-membership of an organisation.

### **298E Industrial action**

This Part applies to conduct carried out with a purpose or intent relating to a person's participation or non-participation in industrial action within the meaning of subsection 4(1).

Note: This section does not use the broader definition of *industrial action* set out in section 298B.

### **298F Matters arising under this Act or the Registration and Accountability of Organisations Schedule**

- (1) This Part applies to conduct carried out with a purpose or intent relating to a person's participation or non-participation (in any capacity) in:
  - (a) any proceedings under this Act; or
  - (b) any other activity for which this Act provides; or
  - (c) any proceedings under the Registration and Accountability of Organisations Schedule; or
  - (d) any other activity for which the Registration and Accountability of Organisations Schedule provides.
- (2) This Part applies to conduct carried out with a purpose or intent relating to:

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**Division 2** Conduct to which this Part applies

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- (a) the fact that an award, a certified agreement or an AWA applies to a person's employment; or
- (b) the fact that the person is bound by an award, a certified agreement or an AWA.

**298G Constitutional corporations**

- (1) This Part applies to:
  - (a) conduct by a constitutional corporation; and
  - (b) conduct that adversely affects a constitutional corporation.
- (2) For the purpose of paragraph (1)(b), conduct is taken to affect adversely a constitutional corporation only if:
  - (a) the constitutional corporation is the person, referred to in the provision of the Division in question, against whom the conduct has been, is being or would be carried out; or
  - (b) the person so referred to is an employee of the constitutional corporation, or has been engaged by the constitutional corporation as an independent contractor, and the conduct affects the person in that capacity.

Note: For *constitutional corporation*, see subsection 4(1).

**298H Territories**

This Part applies to conduct in a Territory.

**298J Operation of State and Territory laws**

Subject to section 298W, to the extent that this Part applies by virtue of the operation of section 298G or 298H, it is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

## **Division 3—Conduct by employers etc.**

### **298K Dismissal etc. of members of industrial associations etc.**

- (1) An employer must not, for a prohibited reason, or for reasons that include a prohibited reason, do or threaten to do any of the following:
  - (a) dismiss an employee;
  - (b) injure an employee in his or her employment;
  - (c) alter the position of an employee to the employee's prejudice;
  - (d) refuse to employ another person;
  - (e) discriminate against another person in the terms or conditions on which the employer offers to employ the other person.
- (2) A person must not, for a prohibited reason, or for reasons that include a prohibited reason, do or threaten to do any of the following:
  - (a) terminate a contract for services that he or she has entered into with an independent contractor;
  - (b) injure the independent contractor in relation to the terms and conditions of the contract for services;
  - (c) alter the position of the independent contractor to the independent contractor's prejudice;
  - (d) refuse to engage another person as an independent contractor;
  - (e) discriminate against another person in the terms or conditions on which the person offers to engage the other person as an independent contractor.

### **298L Prohibited reasons**

- (1) Conduct referred to in subsection 298K(1) or (2) is for a ***prohibited reason*** if it is carried out because the employee, independent contractor or other person concerned:
  - (a) is, has been, proposes to become or has at any time proposed to become an officer, delegate or member of an industrial association; or
  - (b) is not, or does not propose to become, a member of an industrial association; or

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- (c) in the case of a refusal to engage another person as an independent contractor:
    - (i) has one or more employees who are not, or do not propose to become, members of an industrial association; or
    - (ii) has not paid, or does not propose to pay, a fee (however described) to an industrial association; or
  - (d) has refused or failed to join in industrial action; or
  - (e) in the case of an employee—has refused or failed to agree or consent to, or vote in favour of, the making of an agreement to which an industrial association of which the employee is a member would be a party; or
  - (f) has made, proposes to make or has at any time proposed to make an application to an industrial body for an order under an industrial law for the holding of a secret ballot; or
  - (g) has participated in, proposes to participate in or has at any time proposed to participate in a secret ballot ordered by an industrial body under an industrial law; or
  - (h) is entitled to the benefit of an industrial instrument or an order of an industrial body; or
  - (i) has made or proposes to make any inquiry or complaint to a person or body having the capacity under an industrial law to seek:
    - (i) compliance with that law; or
    - (ii) the observance of a person's rights under an industrial instrument; or
  - (j) has participated in, proposes to participate in or has at any time proposed to participate in a proceeding under an industrial law; or
  - (k) has given or proposes to give evidence in a proceeding under an industrial law; or
  - (l) in the case of an employee, or an independent contractor, who is a member of an industrial association that is seeking better industrial conditions—is dissatisfied with his or her conditions; or
  - (m) in the case of an employee or an independent contractor—has absented himself or herself from work without leave if:
    - (i) the absence was for the purpose of carrying out duties or exercising rights as an officer of an industrial association; and
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- (ii) the employee or independent contractor applied for leave before absenting himself or herself and leave was unreasonably refused or withheld; or
  - (n) as an officer or member of an industrial association, has done, or proposes to do, an act or thing for the purpose of furthering or protecting the industrial interests of the industrial association, being an act or thing that is:
    - (i) lawful; and
    - (ii) within the limits of an authority expressly conferred on the employee, independent contractor or other person by the industrial association under its rules; or
  - (o) in the case of an employee or an independent contractor—has not paid, has not agreed to pay, or does not propose to pay, a bargaining services fee.
- (2) If:
- (a) a threat is made to engage in conduct referred to in subsection 298K(1) or (2); and
  - (b) one of the prohibited reasons in subsection (1) of this section refers to a person doing or proposing to do a particular act, or not doing or proposing not to do a particular act; and
  - (c) the threat is made with the intent of dissuading or preventing the person from doing the act, or coercing the person to do the act, as the case requires;
- the threat is taken to have been made for that prohibited reason.

**298M Inducements to cease membership etc. of industrial associations etc.**

An employer, or a person who has engaged an independent contractor, must not (whether by threats or promises or otherwise) induce an employee, or the independent contractor, (as the case requires) to stop being an officer or member of an industrial association.

## **Division 4—Conduct by employees etc.**

### **298N Cessation of work**

An employee or independent contractor must not cease work in the service of his or her employer, or of the person who engaged the independent contractor, (as the case requires) because the employer or person:

- (a) is an officer or member of an industrial association; or
- (b) is entitled to the benefit of an industrial instrument or an order of an industrial body; or
- (c) has made or proposes to make any inquiry or complaint to a person or body having the capacity under an industrial law to seek:
  - (i) compliance with that law; or
  - (ii) the observance of a person's rights under an industrial instrument; or
- (d) has participated in, proposes to participate in or has at any time proposed to participate in any proceedings under an industrial law; or
- (e) has given evidence in a proceeding under an industrial law.



## **Division 5—Conduct by industrial associations etc.**

### **298P Industrial associations acting against employers**

- (1) An industrial association, or an officer or member of an industrial association, must not organise or take, or threaten to organise or take, industrial action against an employer because the employer is an officer or member of an industrial association.
- (2) An industrial association, or an officer or member of an industrial association, must not organise or take, or threaten to organise or take, industrial action against an employer with intent to coerce the employer or person:
  - (a) to become a member of an industrial association of employers; or
  - (b) to cease to be an officer or member of such an association; or
  - (c) not to become an officer or member of such an association.
- (3) An industrial association, or an officer or member of an industrial association, must not:
  - (a) advise, encourage or incite an employer; or
  - (b) organise or take, or threaten to organise or take, industrial action against an employer with intent to coerce the employer;to take action in relation to a person that would, if taken, contravene section 298K.
- (4) An industrial association, or an officer or member of an industrial association, must not, because a member of the association has refused or failed to comply with a direction given by the association:
  - (a) advise, encourage or incite an employer; or
  - (b) organise or take, or threaten to organise or take, industrial action against an employer with intent to coerce the employer;to prejudice the member in the member's employment or possible employment.

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- (5) For the purposes of subsection (4), a direction given by one of the following bodies or persons is taken to have been given by an industrial association:
- (a) the committee of management of the association;
  - (b) an officer or agent of the association acting in that capacity;
  - (c) a member or group of members of the association authorised to give the direction by:
    - (i) the rules of the association; or
    - (ii) the committee of management of the association; or
    - (iii) an officer or agent of the association acting in that capacity;
  - (d) a member of the association, who performs the function of dealing with an employer on behalf of the member and other members of the association, acting in that capacity.

**298Q Industrial associations acting against employees etc.**

- (1) An industrial association, or an officer or member of an industrial association, must not take, or threaten to take, action having the effect, directly or indirectly, of prejudicing a person in the person's employment or possible employment with intent:
- (a) to coerce the person to join in industrial action; or
  - (b) to dissuade or prevent the person from making an application to an industrial body for an order under an industrial law for the holding of a secret ballot.
- (2) An industrial association, or an officer or member of an industrial association, must not:
- (a) take, or threaten to take, action having the effect, directly or indirectly, of prejudicing a person in the person's employment or possible employment; or
  - (b) advise, encourage or incite a third person to take action having the effect, directly or indirectly, of prejudicing a person in the person's employment or possible employment;
- for the reason that, or for reasons that include the reason that, the person has not paid, has not agreed to pay, or does not propose to pay, a bargaining services fee.

### **298R Industrial associations acting against members**

An industrial association, or an officer or member of an industrial association, must not impose, or threaten to impose, a penalty, forfeiture or disability of any kind on a member of the association:

- (a) with intent to coerce the member to join in industrial action; or
- (b) because the member has refused or failed to join in industrial action; or
- (c) because the member has made, proposes to make or has at any time proposed to make an application to an industrial body for an order under an industrial law for the holding of a secret ballot; or
- (d) because the member has participated in, proposes to participate in or has at any time proposed to participate in a secret ballot ordered by an industrial body under an industrial law.

### **298S Industrial associations acting against independent contractors etc.**

- (1) In this section:

***discriminatory action***, in relation to an eligible person, means:

- (a) a refusal to make use of, or to agree to make use of, services offered by the eligible person; or
- (b) a refusal to supply, or to agree to supply, goods or services to the eligible person.

***eligible person*** means a person who is not an employee, but who:

- (a) is eligible to join an industrial association; or
- (b) would be eligible to join an industrial association if he or she were an employee.

- (2) An industrial association, or an officer or member of an industrial association, must not:

- (a) advise, encourage or incite a person (whether an employer or not) to take discriminatory action against an eligible person because the eligible person is not a member of an industrial association; or

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- (b) take, or threaten to take, industrial action against an employer with intent to coerce the employer to take discriminatory action against an eligible person because the eligible person is not a member of an industrial association; or
  - (c) take, or threaten to take, industrial action against an eligible person with intent to coerce the person to join an industrial association.
- (3) An industrial association, or an officer or member of an industrial association, must not:
  - (a) advise, encourage or incite a person (whether an employer or not) to take discriminatory action against an eligible person for a prohibited reason; or
  - (b) take, or threaten to take, industrial action against an employer with intent to coerce the employer to take discriminatory action against an eligible person for a prohibited reason; or
  - (c) take, or threaten to take, industrial action against an eligible person for a prohibited reason.
- (4) Conduct mentioned in subsection (3) is carried out for a ***prohibited reason*** if it is carried out because the eligible person concerned has not paid, has not agreed to pay, or does not propose to pay, a bargaining services fee.

**298SA Industrial associations not to demand bargaining services fee**

- (1) An industrial association, or an officer or member of an industrial association, must not demand (whether orally or in writing) payment of a bargaining services fee from another person.
- (1A) Nothing in this section prevents an industrial association from demanding payment of a bargaining services fee that is payable to the association under a contract for the provision of bargaining services.
- (2) In this section:
  - demand*** includes:
    - (a) purport to demand; and
    - (b) have the effect of demanding; and
    - (c) purport to have the effect of demanding.

**298SB Action to coerce person to pay bargaining services fee**

An industrial association, or an officer or member of an industrial association, must not take, or threaten to take, action against a person with intent to coerce the person, or another person, to pay a bargaining services fee.

**298SBA Industrial associations not prevented from entering contracts**

To avoid doubt, nothing in this Division prevents an industrial association from entering into a contract for the provision of bargaining services with a person who is not a member of the association.

**Division 5A—False or misleading representations about bargaining services fees etc.**

**298SC False or misleading representations about bargaining services fees etc.**

A person must not make a false or misleading representation about:

- (a) another person's liability to pay a bargaining services fee; or
- (b) another person's obligation to enter into an agreement to pay a bargaining services fee; or
- (c) another person's obligation to join an industrial association.

## **Division 6—Remedies for breaches of this Part**

### **298T Applications to the Court**

- (1) Subject to subsection (4), an application may be made to the Court for orders under section 298U in respect of conduct in contravention of this Part.
- (2) The application may be made by:
  - (a) the person, referred to in the provision in question, against whom the conduct has been, is being or would be carried out; or
  - (b) in the case of a contravention of this Part by virtue of the operation of section 298D, 298E or 298F—an organisation of which the person is a member; or
  - (c) in the case of a contravention of this Part by virtue of the operation of section 298G or 298H—an industrial association of which the person is a member; or
  - (d) the Employment Advocate; or
  - (e) any other person prescribed by the regulations.
- (3) A regulation prescribing persons for the purpose of paragraph (2)(e) may limit its application to specified circumstances.
- (4) An application cannot be made in respect of conduct in contravention of this Part by virtue of the operation of section 298G or 298H if:
  - (a) an application has already been made for a remedy in respect of the conduct under a law of a State or Territory; and
  - (b) that application has not failed for lack of jurisdiction.
- (5) The reference in paragraph (4)(a) to a remedy is taken not to include the imposition of a criminal penalty.

### **298U Orders that the Federal Court may make**

In respect of conduct in contravention of this Part, the Court may, if the Court considers it appropriate in all the circumstances of the case, make one or more of the following orders:

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- (a) an order imposing on a person or industrial association whose conduct contravened or is contravening the provision in question a penalty of not more than:
  - (i) in the case of a body corporate—300 penalty units; or
  - (ii) in any other case—60 penalty units;
- (b) an order requiring the person or industrial association to reinstate an employee, or to re-engage an independent contractor;
- (c) an order requiring the person or industrial association to pay to an employee or independent contractor, or to a prospective employee or independent contractor, compensation of such amount as the Court thinks appropriate;
- (d) an order requiring the person or industrial association not to carry out a threat made by the person or association, or not to make any further threat;
- (e) injunctions (including interim injunctions), and any other orders, that the Court thinks necessary to stop the conduct or remedy its effects;
- (f) any other consequential orders.

**298V Proof not required of the reason for, or the intention of, conduct**

If:

- (a) in an application under this Division relating to a person's or an industrial association's conduct, it is alleged that the conduct was, or is being, carried out for a particular reason or with a particular intent; and
- (b) for the person or industrial association to carry out the conduct for that reason or with that intent would constitute a contravention of this Part;

it is presumed, in proceedings under this Division arising from the application, that the conduct was, or is being, carried out for that reason or with that intent, unless the person or industrial association proves otherwise.



## **Division 7—Miscellaneous**

### **298W Effect on other laws**

- (1) This section applies if a person's or industrial association's conduct contravenes:
  - (a) this Part by virtue of the operation of section 298G or 298H; and
  - (b) a provision of an industrial law of a State or Territory, being a provision that deals with discrimination or preference in employment.
- (2) If an application is made under Division 6 in respect of the conduct, an application cannot be made, under the industrial law of the State or Territory or any other law, in respect of that conduct.
- (3) Subsection (2) does not preclude a person or industrial association being prosecuted for an offence, or any applications being made in connection with such a prosecution.
- (4) If an application is made under the industrial law of the State or Territory in respect of the conduct, an application cannot be made under Division 6 in respect of that conduct.
- (5) Subsection (4) does not preclude an application being made under Division 6 if the application under the industrial law of the State or Territory was made in connection with the prosecution of the person or industrial association for an offence.

### **298X Contravention of this Part not an offence**

A contravention of this Part is not an offence.

### **298Y Provisions of industrial instruments requiring or permitting conduct in contravention of this Part etc.**

- (1) A provision of an industrial instrument, or an agreement or arrangement (whether written or unwritten), is void to the extent that it requires or permits, or has the effect of requiring or permitting, any conduct that would contravene this Part.

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- (2) A provision of a certified agreement is void to the extent that it requires payment of a bargaining services fee.

**298Z Removal of objectionable provisions from awards and certified agreements**

- (1) Where, on application by a person mentioned in subsection (2), the Commission is satisfied that an award contains objectionable provisions, the Commission must vary the award so as to remove the objectionable provisions.
- (2) The application may be made by:
- (a) an organisation or party bound by the award; or
  - (b) an employee whose employment is subject to the award; or
  - (c) the Employment Advocate.
- (3) Where, on application by a person mentioned in subsection (4), the Commission is satisfied that a certified agreement contains objectionable provisions, the Commission must vary the agreement so as to remove the objectionable provisions.
- (4) The application may be made by:
- (a) a person bound by the certified agreement; or
  - (b) an employee whose employment is subject to the certified agreement; or
  - (c) the Employment Advocate.
- (5) An ***objectionable provision*** is:
- (a) a provision (however described) of an award or a certified agreement that requires or permits any conduct that would contravene this Part or that would (if Division 2 were disregarded) contravene this Part; or
  - (b) a provision (however described) of a certified agreement that requires payment of a bargaining services fee.
- (6) For the purpose of determining whether a provision of an award or certified agreement is an objectionable provision, it does not matter whether that provision is void because of section 298Y.
- (7) In subsection (5):
- permits*** includes:
- (a) purports to permit; and

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- (b) has the effect of permitting; and
- (c) purports to have the effect of permitting.

***requires*** includes:

- (a) purports to require; and
- (b) has the effect of requiring; and
- (c) purports to have the effect of requiring.

## Part XI—Offences

### 299 Offences in relation to Commission

- (1) A person shall not:
- (a) insult or disturb a member of the Commission in the exercise of powers, or the performance of functions, as a member; or
  - (b) interrupt the proceedings of the Commission; or
  - (c) use insulting language towards a member of the Commission exercising powers, or performing functions, as a member; or
  - (d) by writing or speech use words calculated to influence improperly a member of the Commission or a witness before the Commission; or
  - (e) do any other act or thing that would, if the Commission were a court of record, be a contempt of that court.

Penalty: Imprisonment for 12 months.

- (2) A reference in subsection (1) to the Commission or a member of the Commission includes a reference to a person authorised to take evidence on behalf of the Commission.

### 300 Attendance at compulsory conferences

A person directed under subsection 119(1) to attend a conference shall attend the conference, and continue to attend, as directed by the person presiding over the conference.

Penalty: 20 penalty units.

### 301 Intimidation etc.

A person who:

- (a) threatens, intimidates or coerces another person; or
- (b) prejudices another person;

because the other person:

- (c) provided, or proposed to provide, information to the Commission;

- (d) produced, or proposed to produce, documents to the Commission; or
  - (e) appeared, or proposed to appear, as a witness before the Commission;
- is guilty of an offence punishable on conviction by imprisonment for not more than 12 months.

### **302 Creating disturbance near Commission**

A person shall not create or continue a disturbance, or take part in creating or continuing a disturbance, in or near a place at which the Commission is sitting.

Penalty: Imprisonment for 6 months.

### **303 Offences relating to witnesses**

#### *Contravention of requirement by witness*

- (1) A person who has been summoned to appear, or who has appeared, before the Commission as a witness shall not:
- (a) disobey the summons to appear;
  - (b) refuse or fail to be sworn or make an affirmation;
  - (c) refuse or fail to answer a question that the person is required by the Commission to answer; or
  - (d) refuse or fail to produce a document that the person is required by the Commission to produce.

Penalty: Imprisonment for 6 months.

- (1A) For the purposes of an offence against subsection (1), strict liability applies to the physical element, that the person fails as mentioned in paragraph (1)(b), (c) or (d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (1B) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1B) (see subsection 13.3(3) of the *Criminal Code*).

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- (2) A reference in subsection (1) to the Commission includes a reference to a person authorised to take evidence on behalf of the Commission.

*Giving false evidence*

- (3) A person (the **witness**) is guilty of an offence if:
- (a) the witness gives false sworn or affirmed evidence touching any matter material to that proceeding; and
  - (b) either:
    - (i) the evidence is given in a proceeding before the Commission; or
    - (ii) the evidence is given before a person taking evidence on behalf of the Commission either in a proceeding that has been instituted in the Commission by anyone or for use in a proceeding that will be instituted in the Commission by the witness.

Penalty: Imprisonment for 12 months.

Note: Section 10.2 of the *Criminal Code Act 1995* states that a person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence under duress.

*Inducing or coercing another person to give false evidence*

- (4) A person (the **offender**) is guilty of an offence if:
- (a) another person (the **witness**) has been called or is to be called as a witness in a proceeding before the Commission (whether the person is to appear before the Commission or before someone taking evidence on behalf of the Commission in the proceeding); and
  - (b) the offender induces, threatens or intimidates the witness to give false evidence in the proceeding.

Penalty: Imprisonment for 12 months.

**305 Non-compliance with requirement made by an inspector**

- (1) A person is guilty of an offence if the person contravenes a requirement made by an inspector under subparagraph 86(1A)(b)(iv), paragraph 86(1A)(c) or subsection 86(2) or subparagraph 542(2)(b)(iv), paragraph 542(2)(c) or subsection 542(4).

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

### **305A Non-compliance with requirement made by an authorised officer**

- (1) A person is guilty of an offence if the person contravenes a requirement made by an authorised officer under paragraph 83BH(4)(d) or subsection 83BH(5).

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

### **307 Application for secret ballot in relation to industrial action**

- (1) A person shall not join with other persons in making an application under subsection 136(1) if the application includes a statement that is to the person's knowledge false or misleading in a material particular.

Penalty: 30 penalty units.

- (2) For the purposes of an offence against subsection (1), strict liability applies to the physical element, that the application is made under subsection 136(1).

Note: For *strict liability*, see section 6.1 of *Criminal Code*.

### **308 Compliance with directions in relation to secret ballot**

- (1) An organisation or person (other than the Industrial Registrar) to whom a direction has been given under subsection 138(1) shall comply with the direction.

Penalty: 30 penalty units.

- (2) Subsection (1) is an offence of strict liability.

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Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**317 Offences in relation to ballot**

- (1) Where an electoral officer requires an officer or employee of an organisation or branch of an organisation to provide or make available, for the purposes of a ballot, a register or list of:
- (a) in the case of an officer of the organisation—the members of:
    - (i) the organisation or a branch of the organisation; or
    - (ii) a section or class of the members of the organisation or a branch of the organisation; and
  - (b) in the case of an officer of a branch of the organisation—the members of:
    - (i) the branch; or
    - (ii) a section or class of the members of the branch;
- the officer or employee shall promptly comply with the requirement.

Penalty: 30 penalty units.

- (1A) Subsection (1) does not apply so far as the person is not capable of complying with the requirement.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) A person shall not, in relation to a ballot:
- (a) personate another person to secure a ballot paper to which the personator is not entitled or personate another person for the purpose of voting;
  - (b) do an act that results in a ballot paper or envelope being destroyed, defaced, altered, taken or otherwise interfered with;
  - (c) fraudulently put or deliver a ballot paper or other paper:
    - (i) into a ballot box or other ballot receptacle;
    - (ii) into the post; or
    - (iii) to a person receiving ballot papers for the purposes of the ballot;
  - (d) record a vote that the person is not entitled to record;
  - (e) record more than one vote;
  - (f) forge a ballot paper or envelope, or utter a ballot paper or envelope that the person knows to be forged;



- (g) provide a ballot paper without authority;
- (h) obtain or have possession of a ballot paper to which the person is not entitled; or
- (j) do an act that results in a ballot box or other ballot receptacle being destroyed, taken, opened or otherwise interfered with.

Penalty: 30 penalty units.

- (3) A person shall not, in relation to a ballot:
- (a) hinder or obstruct the taking of the ballot;
  - (b) use any form of intimidation to prevent from voting, or to influence the vote of, a person entitled to vote at the ballot;
  - (c) threaten, offer or suggest, or use, cause or inflict, any violence, injury, punishment, damage, loss or disadvantage because of, or to induce:
    - (i) any vote or omission to vote;
    - (ii) any support of, or opposition to, voting in a particular manner; or
    - (iii) any promise of any vote, omission, support or opposition; or
  - (d) counsel or advise a person entitled to vote to refrain from voting.

Penalty: 30 penalty units.

- (4) A person (in this subsection called the **relevant person**) shall not, in relation to a ballot:
- (a) request, require or induce another person to show a ballot paper to the relevant person, or permit the relevant person to see a ballot paper, in such a manner that the relevant person can see the vote, while the ballot paper is being marked or after it has been marked; or
  - (b) if the relevant person is a person performing duties for the purposes of the ballot, show to another person, or permit another person to have access to, a ballot paper used in the ballot, otherwise than in the performance of the duties.

Penalty: 30 penalty units.

- (5) In this section:

**ballot** means a ballot ordered under section 135 or 136.

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**338 Contracts entered into by agents of employers**

A person carrying on the business of an employment agency shall not, as agent for an employer, make an agreement for the employment of an employee on terms and conditions less favourable to the employee than the terms and conditions of an award, an order of the Commission, or a certified agreement, binding on the employer and employee.

Penalty: 20 penalty units.

**339 Publication of trade secrets etc.**

- (1) A person commits an offence if:
- (a) the person gives information as evidence or publishes information; and
  - (b) giving or publishing the information:
    - (i) contravenes section 355; or
    - (ii) contravenes a direction given under section 355.

Penalty: 20 penalty units.

- (2) Strict liability applies to subparagraph (1)(b)(i).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Part XII—Costs**

### **Division 2—Costs**

#### **347 Costs only where proceeding instituted vexatiously etc.**

- (1) A party to a proceeding (including an appeal) in a matter arising under this Act (other than an application under section 170CP) shall not be ordered to pay costs incurred by any other party to the proceeding unless the first-mentioned party instituted the proceeding vexatiously or without reasonable cause.
- (2) In subsection (1):  
  
*costs* includes all legal and professional costs and disbursements and expenses of witnesses.

## Part XIII—Miscellaneous

### 348 Delegation by Minister

The Minister may, by signed instrument, delegate to a person occupying a specified office in the Department all or any of the Minister's powers under this Act.

### 349 Conduct by officers, directors, employees or agents

- (1) Where it is necessary to establish, for the purposes of this Act or the BCII Act, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
  - (a) that the conduct was engaged in by an officer, director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
  - (b) that the officer, director, employee or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by:
  - (a) an officer, director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or
  - (b) any other person at the direction or with the consent or agreement (whether express or implied) of an officer, director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, director, employee or agent;shall be taken, for the purposes of this Act or the BCII Act (as the case requires), to have been engaged in also by the body corporate.
- (3) A reference in this section to the state of mind of a person includes a reference to the knowledge, intent, opinion, belief or purpose of the person and the person's reasons for the intent, opinion, belief or purpose.

**350 No imprisonment in default**

In spite of the provisions of any other law, a court may not direct that a person shall serve a sentence of imprisonment in default of the payment of a fine or other pecuniary penalty imposed under this Act or the BCII Act.

**351 Jurisdiction of courts limited as to area**

- (1) For the purposes of this Act, a court of a State or Territory whose jurisdiction is limited, as to subject matter or parties, to any part of a State or Territory shall be taken to have jurisdiction throughout the State or Territory.
- (2) On the hearing of a proceeding in a court for the recovery of a penalty, fine, fee, levy or due, the court may, if in the interests of justice it considers appropriate, adjourn the hearing to a court of competent jurisdiction to be held at some other place in the same State or Territory.

**352 Public sector employer to act through employing authority**

In spite of anything to the contrary in this Act, the BCII Act or any other law, the employer of an employee engaged in public sector employment shall, for the purposes of this Act, the BCII Act and the Rules of the Commission, act only by an employing authority of the employee acting on behalf of the employer and, in particular:

- (a) anything done by an employing authority of an employee has effect, for those purposes, as if it had been done by the employer of the employee; and
- (b) anything served on, or otherwise given or notified to, an employing authority of an employee has effect, for those purposes, as if it had been served on, or given or notified to, the employer of the employee.

**353 Proceedings by and against unincorporated clubs**

- (1) For the purposes of this Act, the treasurer of a club shall be taken to be the employer of a person employed for the purposes or on behalf of the club, and any proceeding that may be taken under this Act by or against the club may be taken by or against the treasurer on behalf of the club.

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- (2) The treasurer is authorised to retain out of the funds of the club sufficient money to meet payments made by the treasurer on behalf of the club under this section.

- (3) In this section:

**club** means an unincorporated club.

**treasurer** includes a person having possession or control of any funds of a club.

**353A Records relating to employees**

- (1) The regulations may make provision in relation to:
- (a) the making and retention by employers of records relating to the employment of persons under an award, a certified agreement or an AWA; and
  - (b) the inspection of such records.
- (2) The regulations may require employers of persons employed under an award, a certified agreement or an AWA to issue pay slips to those persons at such times, and containing such particulars, as are prescribed.

**354 Inspection of documents etc.**

All documents and other things produced in evidence before the Commission may be inspected by the Commission or by such other parties as the Commission allows.

**355 Trade secrets etc. tendered as evidence**

- (1) In a proceeding before the Court or the Commission:
- (a) the person entitled to a trade secret may object that information tendered as evidence relates to the trade secret; or
  - (b) a witness or party may object that information tendered as evidence relates to the profits or financial position of the witness or party.
- (2) Where an objection is made under subsection (1) to information tendered as evidence, the information may only be given as evidence under a direction of the Court or Commission.

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- (3) If information is given as evidence under subsection (2), it shall not be published in any newspaper, or otherwise, unless the Court or Commission, by order, permits the publication.
- (4) Where the Court or Commission directs that information relating to a trade secret or to the profits or financial position of a witness or party shall be given in evidence, the evidence shall be taken in private if the person entitled to the trade secret, or the witness or party, requests.
- (5) The Court or Commission may direct that evidence given in a proceeding before it, or the contents of a document produced for inspection, shall not be published.

Note: Giving information as evidence, or publishing information, in contravention of this section or a direction under this section may be an offence under section 339.

**356 Application of penalty**

A court that imposes a monetary penalty under this Act (other than a penalty for an offence) may order that the penalty, or a part of the penalty, be paid:

- (a) to the Commonwealth; or
- (b) to a particular organisation or person.

**357 Enforcement of penalties etc.**

- (1) Where a court has:
  - (a) imposed a monetary penalty under this Act or the BCII Act (other than a penalty for an offence); or
  - (b) under subsection 178(6), ordered the payment of an amount; or
  - (ba) under subsection 178(6A) or (6B), ordered the payment of an amount; or
  - (d) ordered the payment of costs or expenses;
 a certificate signed by a Registrar, specifying the amount payable and by whom and to whom respectively it is payable, may be filed in the Court or in any other court of competent jurisdiction.
- (2) A certificate filed in a court under subsection (1) is enforceable in all respects as a final judgment of the court in which it is filed.

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- (3) Where there are 2 or more creditors under a certificate, process may be issued separately by each creditor for the enforcement of the certificate as if there were separate judgments.

**358 Appropriation for payment of certain salaries and allowances**

The Consolidated Revenue Fund is appropriated to the extent necessary for payment of salaries, allowances (including travelling allowance) and other amounts under section 12, 21, 23, 365 or 366.

**358A Reports about developments in making agreements**

- (1) For:
- (a) the period from the commencement of this section until the end of 31 December 1997; and
  - (b) the period of 2 years starting on 1 January 1998 and each following period of 2 years;
- the Minister must cause a person to review and report to the Minister in writing about:
- (c) developments, in Australia during that period, in bargaining for the making of agreements covered by Parts VIB and VID; and
  - (d) in particular, the effects that such bargaining has had in Australia during that period on the employment (including wages and conditions of employment) of women, part-time employees, persons from a non-English speaking background and young persons.
- (2) The person who reviews and reports as mentioned in subsection (1) must be someone who, in the Minister's opinion, is suitably qualified and appropriate to do so.
- (3) The person preparing the report must give it to the Minister as soon as practicable, and in any event within 6 months, after the end of the period to which it relates.
- (4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (5) Subsections 34C(4) to (7) of the *Acts Interpretation Act 1901* apply to a report under this section as if it were a periodic report as defined in subsection 34C(1) of that Act.
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**359 Regulations**

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The matters in relation to which the Governor-General may make regulations include, but are not limited to:
  - (a) the manner in which, and the time within which, applications, submissions and objections under this Act may be made and dealt with; and
  - (b) the practice and procedure of the Commission; and
  - (c) the fees to be charged in relation to proceedings under this Act; and
  - (d) the duties of the Industrial Registrar, the Deputy Industrial Registrars and any officers of the Commission; and
  - (f) the exhibiting, on the premises of an employer bound by an award, an order of the Commission or a certified agreement, of any of the terms of the award, order or agreement; and
  - (fa) the delegation, by an approving authority that is a State or Territory training authority, of any of its functions and powers under Part VIE; and
  - (g) penalties not exceeding a fine of \$1,000 for offences against the regulations.
- (3) The power conferred by subsection (1) to make regulations with respect to the matter referred to in paragraph (2)(b) includes power to make regulations with respect to that matter in relation to any jurisdiction conferred on the Commission by or under any other Act, whether passed before or after this Act.

## **Part XIV—Jurisdiction of the Federal Court of Australia**

### **Division 1—Original jurisdiction**

#### **412 Jurisdiction of Court**

- (1) The Court has jurisdiction with respect to matters arising under this Act in relation to which:
  - (a) applications may be made to it under this Act; or
  - (b) actions may be brought in it under this Act; or
  - (c) questions may be referred to it under this Act; or
  - (d) appeals lie to it under section 422; or
  - (e) penalties may be sued for and recovered under this Act; or
  - (f) prosecutions may be instituted for offences against this Act.

- (2) For the purposes of section 44 of the *Judiciary Act 1903*, the Court is taken to have jurisdiction with respect to any matter in which a writ of mandamus or prohibition or an injunction is sought against an officer or officers of the Commonwealth holding office under this Act or the *Coal Industry Act 1946*.

Note: Section 44 of the *Judiciary Act 1903* gives the High Court of Australia power to remit a matter to a federal court that has jurisdiction with respect to that matter.

- (3) The Court has jurisdiction with respect to matters remitted to it under section 44 of the *Judiciary Act 1903*.

#### **413 Interpretation of awards**

- (1) The Court may give an interpretation of an award on application by:
  - (a) the Minister; or
  - (b) an organisation or person bound by the award.
- (2) The decision of the Court is final and conclusive and is binding on the organisations and persons bound by the award who have been given an opportunity of being heard by the Court.

#### **413A Interpretation of certified agreements**

- (1) The Court may give an interpretation of a certified agreement on application by:
  - (a) the Minister; or
  - (b) an organisation or person bound by the certified agreement; or
  - (c) an employee whose employment is subject to the agreement.
- (2) The decision of the Court is final and conclusive and is binding on:
  - (a) the organisations and persons bound by the agreement; and
  - (b) the employees whose employment is subject to the agreement;who have been given an opportunity of being heard by the Court.

#### **414 Exclusive jurisdiction**

- (1) Subject to this Act, the jurisdiction of the Court in relation to an act or omission for which an organisation or member of an organisation is liable to be sued, or to be proceeded against for a pecuniary penalty, is exclusive of the jurisdiction of any other court created by the Parliament or any court of a State or Territory.
- (3) The jurisdiction of the Court under section 422 is exclusive of the jurisdiction of any court of a State or Territory to hear and determine an appeal from a judgment from which an appeal may be brought to the Court under that section.

#### **415 Exercise of Court's original jurisdiction**

- (1) The jurisdiction of the Court under this Act is to be exercised by a Full Court in relation to matters in which a writ of mandamus or prohibition or an injunction is sought against:
  - (a) a Presidential member; or
  - (b) officers of the Commonwealth at least one of whom is a Presidential member.
- (2) Subsection (1) does not require the jurisdiction of the Court to be exercised by a Full Court in relation to a prosecution for an offence merely because the offence relates to a matter to which that subsection applies.

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- (3) Subsection (1) does not, in relation to matters referred to in that subsection, require the jurisdiction of the Court to be exercised by a Full Court to:
- (a) join or remove a party; or
  - (b) make an order (including an order for costs) by consent disposing of a matter; or
  - (c) make an order that a matter be dismissed for want of prosecution; or
  - (d) make an order that a matter be dismissed for:
    - (i) failure to comply with a direction of the Court; or
    - (ii) failure of the applicant to attend a hearing relating to the matter; or
  - (e) vary or set aside an order under paragraph (c) or (d); or
  - (f) give directions about the conduct of a matter, including directions about:
    - (i) the use of written submissions; and
    - (ii) limiting the time for oral argument.
- (4) The Rules of Court may make provision enabling the powers mentioned in subsection (3) to be exercised, subject to conditions prescribed by the Rules, without an oral hearing.

**416 Reference of proceedings to Full Court**

- (1) At any stage of a proceeding in a matter arising under this Act, a single Judge exercising the jurisdiction of the Court:
- (a) may refer a question of law for the opinion of a Full Court; and
  - (b) may, of the Judge's own motion or on the application of a party, refer the matter to a Full Court to be heard and determined.
- (2) If a Judge refers a matter to a Full Court under subsection (1), the Full Court may have regard to any evidence given, or arguments adduced, in the proceeding before the Judge.

## **Division 2—Appellate jurisdiction**

### **422 Appeals from State and Territory courts**

- (1) An appeal lies to the Court from a judgment of a court of a State or Territory in a matter arising under this Act or the BCII Act.
- (2) It is not necessary to obtain the leave of the Court or the court appealed from in relation to an appeal under subsection (1).
- (3) An appeal does not lie to the High Court from a judgment from which an appeal may be made to the Court under subsection (1).

## **Division 3—Representation and intervention**

### **469 Representation of parties before Court**

- (1) A party to a proceeding before the Court in a matter arising under this Act, the BCII Act or the Registration and Accountability of Organisations Schedule may appear in person.
- (2) Subject to this and any other Act, a party to a proceeding before the Court in a matter arising under this Act may be represented only as provided by this section.
- (2A) Subject to this Act, the Registration and Accountability of Organisations Schedule and any other Act, a party to a proceeding before the Court in a matter arising under the Registration and Accountability of Organisations Schedule may be represented only as provided by this section.
- (2B) Subject to this Act, the BCII Act and any other Act, a party to a proceeding before the Court in a matter arising under the BCII Act may be represented only as provided by this section.
- (3) A party (including an employing authority) may be represented by counsel or solicitor.
- (4) An employing authority may be represented by a prescribed person.
- (5) Regulations made for the purposes of subsection (4) may prescribe different classes of persons in relation to different classes of proceedings.
- (6) Subject to subsections (8) and (9), a party that is an organisation may be represented by:
  - (a) a member, officer or employee of the organisation; or
  - (b) a member, officer or employee of a peak council to which the organisation is affiliated.
- (7) Subject to subsections (8) and (9), a party other than an organisation or employing authority may be represented by:
  - (a) an officer or employee of the party; or

- (b) a member, officer or employee of an organisation of which the party is a member; or
  - (c) an officer or employee of a peak council to which the party is affiliated; or
  - (d) an officer or employee of a peak council to which an organisation or association of which the party is a member is affiliated.
- (8) Subsections (6) and (7) do not apply in relation to:
- (a) proceedings under section 422; or
  - (b) proceedings in relation to offences against this Act, the BCII Act or the Registration and Accountability of Organisations Schedule.
- (9) In a relevant proceeding, a party may be represented as provided by subsection (6) and (7) only with the leave of the Court.
- (10) In this section:
- party* includes an intervener.
- relevant proceeding* means proceedings under section 46, 82, 153, 413 or 413A.

#### **470 Intervention generally**

If the Court is of the opinion that an organisation, person or body should be heard in a proceeding before the Court in a matter arising under this Act, the BCII Act or the Registration and Accountability of Organisations Schedule, the Court may grant leave to the organisation, person or body to intervene in the proceeding.

#### **471 Particular rights of intervention of Minister**

- (1) The Minister may, on behalf of the Commonwealth, by giving written notice to the Registrar of the Court, intervene in the public interest in a proceeding before the Court in a matter arising under this Act, the BCII Act or the Registration and Accountability of Organisations Schedule.
- (2) If the Minister intervenes in a proceeding before the Court, the Court may, despite section 347, make an order as to costs against the Commonwealth.

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- (3) If the Minister intervenes in a proceeding before the Court, then, for the purposes of the institution and prosecution of an appeal from a judgment given in the proceeding, the Minister is taken to be a party to the proceeding.
- (4) If, under subsection (3), the Minister institutes an appeal from a judgment, a court hearing the appeal may, despite section 347, make an order as to costs against the Commonwealth.



## Part XV—Matters referred by Victoria

### Division 1—Preliminary

#### 488 Object

The object of this Part is to extend existing provisions of this Act, and to include additional provisions in this Act, as a result of the referral of certain matters to the Parliament of the Commonwealth by the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria.

#### 489 Interpretation

In this Part:

***declared industry sector*** means an industry sector declared in a declaration in force under section 20 of the **Employee Relations Act 1992** of Victoria immediately before the commencement of subsection 4(7) of the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria.

***eligible court*** means:

- (a) the Industrial Division of the Magistrates' Court of Victoria;  
or
- (b) any other court prescribed by the regulations.

***employee*** has the same meaning as in section 3 of the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria, but does not include a person who is undertaking a vocational placement.

***employer*** has the same meaning as in section 3 of the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria.

***employment agreement*** means an agreement in force, or entered into but not yet in force, under Part 2 of the **Employee Relations Act 1992** of Victoria:

- (a) if that Part is in force at the commencement of Division 3 of this Part—at the commencement of that Division; or

- (b) if Part 2 of that Act is not so in force—immediately before that Part ceased to be in force.

*modify* includes add to, omit from and substitute for.

*penalty provision* means:

- (a) subsection 505(1); or
- (b) subsection 509(6); or
- (c) section 510; or
- (d) each of the following subclauses of Schedule 1A:
  - 7(1), 13(2), 14(3), 15(2), 15(3), 25(2), 26(3), 27(2), 27(3), 38(2), 39(3), 40(2), 40(3) and 53(3).

*recognised association* has the same meaning as that expression had in section 4 of the **Employee Relations Act 1992** of Victoria:

- (a) if the definition of that expression is in force at the commencement of Division 4 of this Part—at the commencement of that Division; or
- (b) if the definition is not so in force—immediately before the definition ceased to be in force.

*transitional registration application* means an application for registration under Part IX made within 2 years after the commencement of Division 4 of this Part.

*Victorian public sector* has the same meaning as the expression *public sector* has in section 3 of the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria.

*work classification* means a work classification that, immediately before the commencement of subsection 4(7) of the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria:

- (a) was a declared work classification under the **Employee Relations Act 1992** of Victoria; or
- (b) had been declared by the Commission (within the meaning of the **Employee Relations Act 1992** of Victoria) to be an interim work classification.

## **Division 2—Extension of existing Commonwealth provisions**

### **490 Division only has effect if supported by reference**

A section of this Division has effect only for so long, and in so far, as the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria refers to the Parliament of the Commonwealth a matter or matters that result in the Parliament of the Commonwealth having sufficient legislative power for the section so to have effect.

### **491 Exclusion of Commonwealth employment**

This Division does not apply to employment of an employee by the Commonwealth.

### **492 Additional effect of Act—termination of employment**

Without affecting its operation apart from this section, Division 3 of Part VIA also has effect in relation to the termination of employment, at the initiative of the employer, of any employee in Victoria.

### **493 Additional effect of Act—industrial disputes**

- (1) Without affecting its operation apart from this section, this Act also has effect, subject to this section, as if the definition of ***industrial dispute*** in subsection 4(1) were replaced by the following:

***industrial dispute*** means (except in Part XA):

- (a) an industrial dispute (including a threatened, impending or probable industrial dispute):
  - (i) within the limits of Victoria; and
  - (ii) that is about matters pertaining to the relationship between employers and employees; or

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- (b) a situation that is likely to give rise to an industrial dispute of the kind referred to in paragraph (a); and includes a demarcation dispute.
- (2) A law of Victoria prescribed for the purposes of this section prevails to the extent of any inconsistency over an award or order made under this Act, in its operation in accordance with subsection (1), in relation to an industrial dispute about matters pertaining to the relationship between:
  - (a) employers; and
  - (b) employees in the Victorian public sector.

**493A Additional effect of Act—common rules**

- (1) The object of this section is to provide access for all employees in Victoria to the award safety net of fair and enforceable minimum wages and conditions of employment established and maintained by the Commission in accordance with Part VI.
- (2) Without affecting its operation apart from this section, this Act also has effect, subject to this section, as if a reference in section 141 or 142 to a Territory were a reference to Victoria.
- (3) To avoid doubt, regulations prescribing requirements for any of the following:
  - (a) publication of a notice in accordance with paragraph 141(4)(a);
  - (b) giving notice of a place and time in accordance with subsection 142(3);
  - (c) publication of a notice in accordance with subsection 142(4);may specify particular requirements for the publication, or the giving of notice, in accordance with paragraph 141(4)(a) or subsection 142(3) or (4) (as those provisions have effect because of subsection (2) of this section).
- (4) Despite subsection 152(1), this section is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with this section. In particular, a common rule as it has effect because of this section is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with the common rule.

**494 Additional effect of Act—certified agreements**

- (1) In addition to the effect that Division 2 of Part VIB and related provisions of this Act have in relation to agreements about matters pertaining to the relationship between:
  - (a) an employer (within the meaning of that Division) who is a constitutional corporation or the Commonwealth; and
  - (b) employees (within the meaning of that Division) employed in a single business or part of a single business of the employer;that Division and those provisions also have effect as mentioned in this section.
- (2) Division 2 of Part VIB and related provisions of this Act have effect in the same way as mentioned in subsection (1) in relation to an agreement about matters pertaining to the relationship between:
  - (a) an employer (within the meaning of this Part) in Victoria who is carrying on a single business or a part of a single business; and
  - (b) employees (within the meaning of this Part) in Victoria employed in the single business or part.
- (3) Division 2 of Part VIB and related provisions of this Act also have effect as if subsection 170MB(2) were omitted and the following provision substituted:
  - (2) If:
    - (a) an employer is bound by a certified agreement; and
    - (b) the application for certification of the agreement stated that it was made under Division 2 or under Division 2 as it operates because of section 494; and
    - (c) at a later time, a new employer that is a constitutional corporation, or the Commonwealth, or an employer (within the meaning of Part XV) in Victoria, becomes the successor, transmittee or assignee (whether immediate or not) of the whole or a part of the business concerned;then, from the later time:
    - (d) subject to any order of the Commission made under subsection 170MBA(2), the new employer is bound by the certified agreement, to the extent that it relates:
      - (i) to the whole or the part of the business; and

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- (ii) in the case of a new employer (within the meaning of Part XV) in Victoria—to employees (within the meaning of Part XV) in Victoria; and
  - (e) the previous employer ceases to be bound by the certified agreement, to the extent that it relates:
    - (i) to the whole or the part of the business; and
    - (ii) in the case of a new employer (within the meaning of Part XV) in Victoria—to employees (within the meaning of Part XV) in Victoria; and
  - (f) subject to any order of the Commission made under subsection 170MBA(2), a reference in this Part to the employer includes a reference to the new employer, and ceases to refer to the previous employer, to the extent that the context relates:
    - (i) to the whole or the part of the business; and
    - (ii) in the case of a new employer (within the meaning of Part XV) in Victoria—to employees (within the meaning of Part XV) in Victoria.
- (4) Division 2 of Part VIB and related provisions of this Act also have effect as if the following provisions were added at the end of section 170MBA:
- (14) In applying this section to an incoming employer who is an employer (within the meaning of Part XV) in Victoria, references in this section to an employee are taken to be references to an employee who is an employee (within the meaning of Part XV) in Victoria.
- (15) A reference in section 170MB or this section to a provision of one of those sections includes a reference to that provision as applied under subsection 494(3).

**495 Additional effect of Act—AWAs**

- (1) In addition to the effect that Part VID and related provisions of this Act have in relation to agreements about matters pertaining to the relationship between:
- (a) an employer (within the meaning of that Part); and
  - (b) an employee (within the meaning of that Part);

that Part and those provisions also have effect as mentioned in this section.

- (2) Part VID and related provisions of this Act have effect in the same way as mentioned in subsection (1) in relation to an agreement about matters pertaining to the relationship between:
- (a) an employer (within the meaning of this Part) in Victoria;  
and
  - (b) an employee (within the meaning of this Part) in Victoria;
- and so have effect as if the following paragraph were added at the end of section 170VC:
- “(g) the employer is an employer (within the meaning of Part XV) in Victoria and the employee is an employee (within the meaning of Part XV) in Victoria.”.
- (3) Section 170VS also has effect in relation to an AWA made under Part VID as if the following subparagraph were inserted after subparagraph 170VS(1)(b)(vi):
- “(vii) the new employer is an employer (within the meaning of Part XV) in Victoria and the employee is an employee (within the meaning of Part XV) in Victoria;”.

#### **496 Additional effect of Act—freedom of association**

Despite section 298C, Part XA also has effect in relation to conduct in Victoria.

## **Division 3—New Commonwealth provisions**

### **Subdivision A—General**

#### **497 Division only has effect if supported by reference**

A section of this Division has effect only for so long, and in so far, as the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria refers to the Parliament of the Commonwealth a matter or matters that result in the Parliament of the Commonwealth having sufficient legislative power for the section so to have effect.

#### **498 Exclusion of Commonwealth employment**

This Division does not apply to employment of an employee by the Commonwealth.

#### **499 Inconsistency with other Commonwealth laws**

- (1) Subject to section 531, this Division does not have effect to the extent of any inconsistency with any other Commonwealth law.
- (2) In subsection (1):

*other Commonwealth law* means a law of the Commonwealth other than this Act.

### **Subdivision B—Minimum terms and conditions of Victorian employees**

#### **500 Minimum terms and conditions of employment**

- (1) Subject to sections 507 and 508, minimum terms and conditions of employment for employees in Victoria are contained in Schedule 1A.
- (2) Subsection (1) is intended to supplement, and not to override, entitlements under:
  - (a) Part VIA of this Act; or
  - (b) any Commonwealth legislation other than this Act; or
  - (c) any legislation of Victoria or of any other State or Territory.



## **501 Minimum wages**

- (1) For the purposes of Schedule 1A, the Commission may from time to time, by order, set or adjust a minimum wage for employees within a work classification, other than employees who are subject to an award, a certified agreement or an AWA.

Note: See also section 501A.

- (2) The Commission may only do so on application by:
- (a) an employee, or group of employees, within the work classification; or
  - (b) an employer of such an employee or group of employees; or
  - (c) the Minister; or
  - (d) an organisation that is entitled to represent the industrial interests of one or more of the employees within the work classification; or
  - (e) an organisation of which an employer of employees within the work classification is a member.

Note: Under Division 4, the regulations may make special provision relating to the registration of recognised associations as organisations.

- (2A) The Commission must, on application, grant to a Minister of Victoria, on behalf of the Government of Victoria, leave to intervene in proceedings under subsection (1).
- (3) A minimum wage set or adjusted by the Commission may be different for different categories of employee within the work classification according to whether the employee is a full-time employee, a part-time employee, a temporary employee, a junior employee, an apprentice or a person employed on a casual or piece rate basis.
- (4) In setting the level of minimum wages, the Commission must, so far as possible and appropriate in relation to Victorian practice and conditions, take into consideration:
- (a) the needs of workers and their families (taking into account the general level of wages in Victoria), the cost of living, social security benefits and the relative living standards of other social groups; and
  - (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

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- (5) A minimum wage set or adjusted by the Commission is to be expressed as a rate of pay for each hour worked in a working week of 38 hours or of such other number of hours as the Commission determines to be appropriate in the case of the relevant declared industry sector.
- (6) Nothing in this section empowers the Commission to make any determination, order or decision in relation to the standard hours of work in a declared industry sector.
- (7) In setting or adjusting a minimum wage under subsection (1), the Commission may, if it considers it relevant to do so, have regard to:
  - (a) the transcript of any proceedings before the Employee Relations Commission of Victoria; and
  - (b) any evidence given in any such proceedings; relating to the setting or adjusting of a minimum wage.

**501A Supported Wage System—minimum wage**

- (1) For the purposes of Schedule 1A, the Commission may, by order, determine that the Supported Wage System applies to the employment of employees within a work classification.

Note: The Supported Wage System was endorsed by the Commission in the Full Bench decision dated 10 October 1994 (print L5723).
- (2) If the Commission makes an order under subsection (1), the minimum wage for the purposes of Schedule 1A for employees whose wages are set under the Supported Wage System is the supported wage rate worked out in accordance with the Supported Wage System and not the relevant minimum wage otherwise applicable to those employees under paragraph 1(1)(c) of that Schedule.
- (3) If the Supported Wage System requires a supported wage rate to be worked out by reference to another wage rate, then, for the purposes of subsection (2), the supported wage rate is to be worked out by reference to the minimum wage that would otherwise apply to those employees under paragraph 1(1)(c) of Schedule 1A.
- (4) The Commission may only make an order under subsection (1) on application by:

- (a) an employee, or group of employees, within the work classification; or
- (b) an employer of such an employee or group of employees; or
- (c) the Minister; or
- (d) an organisation that is entitled to represent the industrial interests of one or more of the employees within the work classification; or
- (e) an organisation of which an employer of employees within the work classification is a member.

### **502 Reference of minimum wage proceeding to Full Bench**

- (1) Where a proceeding in relation to an application under subsection 501(2) or 501A(2) is before a member of the Commission:
  - (a) a party to the proceeding; or
  - (b) the Minister;may apply to the member to have the proceeding dealt with by a Full Bench because the subject-matter of the proceeding is of such importance that, in the public interest, the proceeding should be dealt with by a Full Bench.
- (2) If an application is made under subsection (1) of this section to a member of the Commission other than the President, the member must refer the application to the President to be dealt with.
- (3) The President must confer with the member about whether the application should be granted.
- (4) If the President is of the opinion that the subject-matter of the proceeding is of such importance that, in the public interest, the proceeding should be dealt with by a Full Bench, the President must grant the application.
- (5) If the President grants the application, the Full Bench must hear and determine the application and, in the hearing, may have regard to any evidence given, and any arguments adduced, in the proceeding mentioned in subsection (1).
- (5A) The Commission must, on application, grant to a Minister of Victoria, on behalf of the Government of Victoria, leave to intervene in proceedings under subsection (5).

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- (6) The President or a Full Bench may, in relation to the exercise of powers under this section, direct a member of the Commission to provide a report in relation to a specified matter.
- (7) The member must, after making such investigation (if any) as is necessary, provide a report to the President or Full Bench, as the case may be.
- (8) The President may, before a Full Bench has been established for the purpose of hearing and determining, under this section, an application, authorise a member of the Commission to take evidence for the purposes of the hearing and determination, and:
  - (a) the member has the powers of a person authorised to take evidence under subsection 111(3); and
  - (b) the Full Bench must have regard to the evidence.

**503 Modified application of section 143 in relation to minimum wage orders**

For the purpose of applying section 143 to a decision or determination consisting of an order of the Commission under section 501 or 501A:

- (a) the order is not an award or an order affecting an award; and
- (b) the reference in paragraph 143(3)(b) to a registry is taken to be a reference to a registry in Victoria.

**504 Certain provisions of no effect**

A provision of an employment agreement or of any other contract of employment with an employee in Victoria is of no effect to the extent that it provides a term or condition of employment less favourable to an employee than the minimum applicable under subsection 500(1).

**505 Employer must comply with minimum terms and conditions of employment**

- (1) Subject to sections 507 and 508, an employer must not enter into a contract of employment with an employee in Victoria that provides a term or condition of employment less favourable to the employee than the minimum applicable under subsection 500(1).

- (2) A contract of employment with an employee in Victoria entered into by an employer in contravention of subsection (1) of this section is not, for that reason only, illegal, void or unenforceable.

**506 Penalties and recovery of wages—application of sections 178 and 179 to Victorian employees**

- (1) Subject to sections 507 and 508, if an employment agreement does not at any time comply with a minimum term or condition of employment applicable under subsection 500(1), then, for the purposes of sections 178 and 179 (in their application in accordance with section 527), it is taken to have effect as if it did comply.
- (2) Subject to sections 507 and 508, if a contract of employment, other than an employment agreement, with an employee in Victoria does not at any time comply with a minimum term or condition of employment applicable under subsection 500(1), sections 178 and 179 apply as if that minimum term or condition were a term of an award binding the parties to the contract.
- (3) Subsection (2) does not imply that an employee who is a party to an agreement referred to in that subsection may not take proceedings in an eligible court to recover money owed under the contract of employment as if the contract of employment did comply with that minimum term or condition of employment.

**507 Limit on operation of sections 505 and 506 and Schedule 1A**

Sections 505 and 506 do not apply in relation to a contract of employment, or an employment agreement, with an employee, and Schedule 1A does not apply in relation to an employee, during any period in which the employee is subject to a certified agreement or an AWA.

**508 Relationship between awards and minimum terms and conditions of employment**

- (1) An award of the Commission prevails to the extent of any inconsistency with Schedule 1A.

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- (2) To avoid doubt, a common rule declared under subsection 141(1) (as it has effect because of subsection 493A(2)) is taken to be an award of the Commission for the purposes of subsection (1).

**509 Exemption from minimum rate of pay**

- (1) The relevant minimum rate of pay applicable to an employee under paragraph 1(1)(c) of Schedule 1A does not apply to the employee while the employee holds a certificate in force under this section.
- (2) The Commission may give a person a certificate under this section if the Commission is satisfied that, because of the person's age, infirmity or slowness, the person is unable to obtain work at the relevant minimum rate applicable under paragraph 1(1)(c) of Schedule 1A.
- (3) The Commission must specify a minimum rate of pay in the certificate.
- (4) The certificate is in force for 12 months.
- (5) The Commission may renew the certificate from time to time for a further 12 months.
- (6) An employer must not:
  - (a) directly or indirectly pay, or offer to pay, a person holding a certificate under this section at a lower rate than the minimum rate specified in the certificate; or
  - (b) employ, without the written consent of the Commission, more than one person holding a certificate under this section, unless the number of employees of the employer holding such certificates does not exceed one-fifth of the total number of employees of the employer.
- (7) Section 45 has effect as if the following paragraph were added at the end of subsection (1) of that section:
  - “(h) a decision of a member of the Commission refusing to give a person a certificate under section 509 or to renew such a certificate.”.
- (8) A certificate of exemption in force under section 15 of the **Employee Relations Act 1992** of Victoria:

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- (a) if that section is in force at the commencement of this Division—at the commencement of this Division; or
  - (b) if that section is not so in force—immediately before that section ceased to be in force;
- continues in force for the purposes of this Act as if it had been made under this section, at the time it was actually made or last renewed, as the case requires.

**509A Stand down provisions in a contract of employment (other than an employment agreement)**

- (1) If a contract of employment with an employee in Victoria (other than an employment agreement) does not contain provision for the standing-down of employees who cannot be usefully employed because of any strike, breakdown of machinery or any stoppage of work for any cause for which the employer cannot reasonably be held responsible, the contract is taken to include the provision mentioned in subsection (2).
- (2) The provision is that:
  - (a) the employer may deduct payment for any part of a day during which an employee cannot usefully be employed because of any strike, breakdown of machinery or any stoppage of work for any cause for which the employer cannot reasonably be held responsible; and
  - (b) this does not break the continuity of employment of the employee for the purpose of any entitlements.

**Subdivision C—Intervals for meals**

**510 Intervals for meals**

- (1) Subject to sections 512 and 513, an employer must not require an employee in Victoria to work for more than 5 hours continuously without an interval for a meal, unless the employee is subject to an employment agreement that allows the employer to do this.
- (2) The interval for the meal must be for the period required by the employment agreement. If no period is set by the employment agreement, the interval must be for at least half an hour.

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**511 Relationship between section 510 and other laws etc.**

Section 510 is intended to supplement, and not to override, entitlements under:

- (a) any Commonwealth legislation other than this Act; or
- (b) any legislation of Victoria or of any other State or Territory.

**512 Limit on operation of section 510**

Section 510 does not apply in relation to an employee during any period in which the employee is subject to a certified agreement or an AWA.

**513 Relationship between awards and section 510**

An award of the Commission prevails to the extent of any inconsistency with section 510.

**Subdivision D—Records relating to certain employees**

**514 Making and retaining employment records**

- (1) This section applies to persons who are employees in Victoria and who are not employed under an award, a certified agreement or an AWA.
- (2) The regulations may make provision in relation to:
  - (a) the making and retention by employers of records relating to the employment of persons who are employees to whom this section applies; and
  - (b) the inspection of such records.
- (3) The regulations may require employers of persons who are employees to whom this section applies to issue pay slips to those persons at such times, and containing such particulars, as are prescribed.

Note: The requirements concerning the making and keeping of records and the issuing of pay slips in relation to persons who are employees in Victoria but who are covered by awards, certified agreements or AWAs are to be found in section 353A.



## **Subdivision E—Employment agreements**

Note: In addition to the provisions in this Subdivision, sections 504, 506 and 510 also deal with employment agreements.

### **515 Continued operation of employment agreements**

- (1) Subject to subsection (2), for the purposes of this Act, even if Part 2 of the **Employee Relations Act 1992** of Victoria has been or is repealed, an employment agreement continues in force, or comes into force, as if that Part had not been, or were not, repealed.
- (2) For the purposes of this Act, an employment agreement ceases to be in force, or does not come into force, in relation to an employee if the employment of the employee is subject to a certified agreement or an AWA.

### **516 Individual employment agreements on cessation of collective employment agreements**

- (1) When a collective employment agreement ceases to be in force other than because of subsection 515(2):
  - (a) each employee who continues to be employed by the employer; and
  - (b) the employer;are taken, for the purposes of this Division, to be bound by an employment agreement, that is an individual employment agreement, with the same terms and conditions as the collective employment agreement.
- (2) Subject to subsection 515(2), the individual employment agreement is in force at all times after the collective employment agreement ceases to be in force.

### **517 Lodging collective employment agreements within 14 days of coming into force etc.**

- (1) If a copy of a collective employment agreement that came into force before the commencement of this Division was not lodged, under the **Employee Relations Act 1992** of Victoria as then in force, with the Chief Commission Administration Officer of Victoria before this Division commenced, an employer bound by

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the agreement must, within 14 days after the commencement of this Division, lodge a copy of the agreement with a Registrar.

- (2) If a collective employment agreement comes into force after the commencement of this Division, an employer bound by the agreement must, within 14 days after the agreement comes into force, lodge a copy of the agreement with a Registrar.
- (3) If an employer does not comply with subsection (1) or (2), the employment agreement ceases to be in force for the purposes of this Act at the end of the 14 days mentioned in that subsection.

**518 Variation of collective employment agreements**

- (1) The parties to a collective employment agreement may not vary any term of the agreement unless the variation is necessary:
  - (a) to remove an ambiguity or uncertainty; or
  - (b) to make the agreement comply with section 519 or 520; or
  - (c) to make the agreement comply with a minimum term or condition of employment applicable under subsection 500(1).
- (2) If the parties to a collective employment agreement vary a term of the agreement in accordance with subsection (1) of this section, a party to the agreement must, within 14 days after the variation comes into force, lodge a copy of the agreement, as varied, with a Registrar.
- (3) If a party does not comply with subsection (2), the variation of the agreement ceases to be in force for the purposes of this Act at the end of the 14 days mentioned in that subsection.

**519 Stand down provisions**

- (1) If an employment agreement does not contain provision for the standing-down of employees who cannot be usefully employed because of any strike, breakdown of machinery or any stoppage of work for any cause for which the employer cannot reasonably be held responsible, the agreement is taken to include the provision mentioned in subsection (2).
- (2) The provision is that:
  - (a) the employer may deduct payment for any part of a day during which an employee cannot usefully be employed

because of any strike, breakdown of machinery or any stoppage of work for any cause for which the employer cannot reasonably be held responsible; and

- (b) this does not break the continuity of employment of the employee for the purpose of any entitlements.

## **520 Dispute resolution provisions**

- (1) If an employment agreement does not contain provisions that set out procedures to be followed to prevent or settle claims, disputes or grievances that arise during the currency of the agreement, the agreement is taken to include the provision mentioned in subsection (2).
- (2) The provision is that any dispute or grievance that arises must be dealt with in the following manner:
  - (a) the matter must first be discussed by the aggrieved employee with his or her immediate supervisor;
  - (b) if not settled, the employee may request a representative to be present and the matter must be discussed with the immediate supervisor and his or her superior or another representative of the employer appointed for the purpose of this procedure;
  - (c) if the matter is not resolved, it must be submitted to the Commission or an agreed mediator for the purposes of conciliation or mediation;
  - (d) the parties may agree to submit the dispute to arbitration and, if so agreed, the decision must be accepted by the parties subject to any appeal available;
  - (e) until the matter is determined, work must continue at the direction of the employer. No party is to be prejudiced as to the final settlement by the continuance of work in accordance with this procedure;
  - (f) the parties must co-operate to ensure that these procedures are carried out expeditiously.
- (3) If an employment agreement does contain provisions of the kind mentioned in subsection (1) and those provisions refer to conciliation or mediation by the Employee Relations Commission of Victoria, the reference is taken for the purposes of this Act to be a reference to conciliation by the Australian Industrial Relations Commission.

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**521 Limit on damages for breach of employment agreement**

If:

- (a) after the commencement of this Division, an employee does an act, or fails to do an act; and
- (b) the act or failure constitutes a contravention or contraventions of an employment agreement;

the amount of damages that may be recovered in any proceeding against the employee in respect of the contravention or contraventions must not exceed \$5,000.

**522 Employer to give copy of employment agreement**

Every employer bound by an employment agreement must, on being requested to do so by an employee also bound by the agreement, give a copy of the agreement to the employee as soon as possible.

**523 Registrar not to divulge information in employment agreements**

If a Registrar has a copy of an employment agreement, the Registrar must not allow the information in the copy to become available to any person other than:

- (a) a party to the agreement; or
- (b) a person with authority to enforce the provisions of the agreement on behalf of a party to the agreement.

**524 Restriction on protected action and AWA industrial action: employees**

Subject to section 529, if an employee who is bound by an employment agreement organises or engages in industrial action (including within the meaning of Division 8 of Part VID):

- (a) in the case of a collective employment agreement—at any time when the agreement is in force; or
- (b) in the case of an individual employment agreement—at any time during the period of 3 years after the commencement of this Division;

then:

- (c) the action is not protected action for the purposes of Division 8 of Part VIB; and

- (d) the action is not AWA industrial action for the purposes of Division 8 of Part VID.

**525 Restriction on protected action and AWA industrial action: employers**

Subject to section 529, if an employer who is bound by an employment agreement locks out (including within the meaning of Division 8 of Part VID) an employee:

- (a) in the case of a collective employment agreement—at any time when the agreement is in force; or
- (b) in the case of an individual employment agreement—at any time during the period of 3 years after the commencement of this Division;

then:

- (c) the lockout is not protected action for the purposes of Division 8 of Part VIB; and
- (d) the lockout is not AWA industrial action for the purposes of Division 8 of Part VID.

**526 Restriction on protected action: organisations**

Subject to section 529, if:

- (a) either:
  - (i) an organisation of employees; or
  - (ii) an officer or employee of such an organisation acting in that capacity;organises or engages in industrial action; and
- (b) the purpose of so doing is to support or advance claims in respect of the employment of any employee bound by an employment agreement:
  - (i) in the case of a collective employment agreement—at any time; or
  - (ii) in the case of an individual employment agreement—at any time during the period of 3 years after the commencement of this Division;

then the action is not protected action for the purposes of Division 8 of Part VIB.

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**527 Application of Act as if employment agreement were a certified agreement**

- (1) Subject to this section, this Act (other than Part VIB and sections 143, 353A and 358A) applies in relation to an employment agreement in the same way as it applies in relation to a certified agreement.
- (2) Subsection (1) does not have the effect that any other Act applies in relation to an employment agreement in the same way as it applies in relation to a certified agreement.

**528 Application of section 111AAA as if employment agreement were a State employment agreement**

- (1) Subject to this section and to section 529, section 111AAA applies in relation to an employment agreement in the same way as it applies in relation to a State employment agreement.
- (2) Subsection (1) does not apply to an employment agreement that was not genuinely entered into. An example of such an agreement is one entered into as a result of coercion.

**529 Exclusion of certain agreements from sections 524, 525, 526 and 528**

Sections 524, 525, 526 and 528 do not apply to an employment agreement:

- (a) that is taken to exist by section 516; or
- (b) that was taken to exist at any time before the commencement of this Division by subsection 11(3) of the **Employee Relations Act 1992** of Victoria as then in force; or
- (c) that was taken to exist by subsection 24(3) of the **Employee Relations Act 1992** of Victoria at any time while that subsection was in force; or

Note: Subsection 24(3) of the **Employee Relations Act 1992** of Victoria was repealed by section 5 of the **Employee Relations (Amendment) Act 1994** of Victoria.

- (d) that was taken to exist at any time before the commencement of this Division by:
  - (i) clause 22 of Schedule 6 to the **Public Sector Management Act 1992** of Victoria; or

- (ii) section 19 of the **Vocational Education and Training (College Employment) Act 1993** of Victoria;  
as then in force.

### **530 Relationship between employment agreements and awards**

An award prevails to the extent of any inconsistency with an employment agreement.

### **531 Relationship between employment agreements and enterprise flexibility agreements**

An enterprise flexibility agreement, as continued in effect by item 2 of Schedule 9 to the *Workplace Relations and Other Legislation Amendment Act 1996*, prevails to the extent of any inconsistency with an employment agreement.

## **Subdivision F—Contravention of penalty provisions**

### **533 Penalties for contravening penalty provisions**

- (1) A contravention of a penalty provision is not an offence. However, an eligible court may make an order imposing a penalty on a person who contravenes a penalty provision.
- (2) The penalty cannot be more than \$10,000 for a body corporate or \$2,000 in other cases.
- (3) An application for an order under subsection (1) may be made by:
  - (a) any employee concerned; or
  - (b) any employer concerned; or
  - (c) any other person prescribed.
- (4) A person is not entitled to apply for an order under this section in respect of a breach of a minimum term or condition of employment applicable under subsection 500(1) if the person has already sought a penalty under section 178 (as that section applies under section 506) in respect of that breach.

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**534 Injunctions**

An eligible court may grant an injunction requiring a person not to contravene, or to cease contravening, a penalty provision.



## **Division 4—Recognised associations**

### **535 Regulations relating to transitional registration applications**

- (1) The regulations may modify the effect of Part IX and related provisions of this Act in relation to any one or more of the following:
  - (a) the making of transitional registration applications by recognised associations;
  - (b) the grant of transitional registration applications made by recognised associations;
  - (c) the registering of recognised associations as a result of making transitional registration applications.
- (2) If the matters referred to the Parliament of the Commonwealth by the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria cease to be so referred:
  - (a) the modifications made by the regulations cease to have effect; but
  - (b) the validity of any registration of a recognised association under Part IX of this Act that took place in accordance with the modifications is not affected by the modifications ceasing to have effect as mentioned in paragraph (a).

### **536 Regulations relating to certain recognised associations that have become registered**

The regulations may modify the effect of:

- (a) Part IX and related provisions of this Act; or
- (b) provisions of this Act that refer or otherwise relate to the entitlement of organisations to represent the industrial interests of members;

in relation to either or both of the following:

- (c) recognised associations that are registered under Part IX as a result of making transitional registration applications;
- (d) organisations of which recognised associations are part.

## **Part XVI—Contract outworkers in Victoria in the textile, clothing and footwear industry**

### **Division 1—Preliminary**

#### **537 Object of Part**

The object of this Part is to ensure that an individual who is an outworker other than an employee performing work in Victoria in the textile, clothing or footwear industry is paid not less than the amount he or she would have been entitled to be paid for performing the same work as an employee.

#### **538 Definitions**

In this Part:

***contract outworker*** means an individual who:

- (a) is a party to a contract for services; and
- (b) performs work under it for another party or parties to the contract.

***court of competent jurisdiction*** means:

- (a) a District, County or Local Court; or
- (b) a magistrates court.

***employee*** has the same meaning as in Part XV.

## **Division 2—New Commonwealth provisions**

### **Subdivision A—General**

#### **539 Constitutional corporations**

Without affecting its operation apart from this section, this Part applies where a person who is a party to a contract for services is a constitutional corporation.

#### **540 Interstate trade or commerce etc.**

Without affecting its operation apart from this section, this Part applies where work is contracted to be performed under a contract for services in the course of, or in relation to, trade or commerce:

- (a) between Australia and a place outside Australia; or
- (b) between the States; or
- (c) within a Territory; or
- (d) between a State and a Territory; or
- (e) between 2 Territories.

#### **540A Concurrent operation of Victorian laws**

This Part is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with this Part.

### **Subdivision B—Minimum rate of pay**

#### **541 Minimum rate of pay**

- (1) To the extent that work performed under and in accordance with a contract for services to which a contract outworker is a party is work that:
  - (a) is performed by:
    - (i) the contract outworker; or
    - (ii) one or more other individuals who are not parties to the contract; and
  - (b) satisfies the criteria in subsection (2);

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a person who is obliged under the contract to pay for the work performed must pay the contract outworker and each other individual not less than the statutory amount calculated under subsection (3) or (5) (as appropriate) for his or her work.

- (2) The criteria are:
- (a) the work is performed in Victoria; and
  - (b) the work comprises packing, processing or otherwise working on articles or materials for the textile, clothing or footwear industry; and
  - (c) the work is performed in or about:
    - (i) private residential premises; or
    - (ii) premises that are not business or commercial premises of anyone who is obliged under the contract to pay for the work performed.
- (3) The **statutory amount** owed to the contract outworker and each other individual is the amount that he or she would have been entitled to be paid because of clause 1 of Schedule 1A for the work mentioned in subsection (1) if he or she had performed the work as an employee in or about any premises in Victoria. This subsection is subject to subsection (5).
- (4) For the purposes of subsection (3), disregard provisions in clause 1 of Schedule 1A that deal with paid leave.
- (5) If:
- (a) both of these conditions are satisfied:
    - (i) the contract outworker or other individual is subject to one or more terms of an award that are common rules under Division 5 of Part VI;
    - (ii) that term or those terms provide for him or her to be entitled to be paid an amount for performing the work; or
  - (b) in a case where paragraph (a) does not apply—both of the conditions mentioned in that paragraph would be satisfied, if he or she had performed the work as an employee in or about any premises in Victoria;
- the **statutory amount** owed to him or her is the greater of the following amounts:
- (c) the amount mentioned in subparagraph (a)(ii);

- (d) the amount that would have been worked out under subsection (3) in relation to his or her performance of the work, if this subsection did not operate.

Example: The term of an award that is a common rule under Division 5 of Part VI provides for a contract worker to be paid an amount for the work that is higher than the amount worked out in accordance with clause 1 of Schedule 1A. Therefore, the statutory amount owed to the worker is the amount provided for by the term of the award.

- (6) A person may discharge an obligation under subsection (1) to pay an amount to an individual other than a contract outworker by paying the amount to the contract outworker on behalf of the individual.
- (7) To avoid doubt, the obligation imposed by subsection (1) on a person to pay not less than the statutory amount for work performed under a contract for services does not apply to that person to the extent that the obligation relates to work performed under another contract for services.

Example: A person (the *head contractor*) enters into a contract for services with a contract outworker under which the contract outworker is to make shirts. If the contract outworker subcontracts some of that work to other contract outworkers and agrees to pay them for that work, it is the subcontractor who is subject to the obligation in subsection (1) and not the head contractor.

## Subdivision C—Inspectors

### 542 Powers of inspectors

#### *Purpose for which powers of inspectors can be exercised*

- (1) The powers of an inspector under this section may be exercised for the purpose of ascertaining whether section 541 is being, or has been, observed.

#### *Powers of inspectors*

- (2) The powers of an inspector are:
  - (a) to, without force, enter:
    - (i) premises on which the inspector has reasonable cause to believe that work to which section 541 applies is being or has been performed; or

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- (ii) a place of business in which the inspector has reasonable cause to believe that there are documents relevant to the purpose set out in subsection (1); and
- (b) on premises or in a place referred to in paragraph (a):
  - (i) to inspect any work, material, machinery, appliance, article or facility; and
  - (ii) as prescribed, to take samples of any goods or substances; and
  - (iii) to interview any person; and
  - (iv) to require a person having the custody of, or access to, a document relevant to that purpose to produce the document to the inspector within a specified period; and
  - (v) to inspect, and make copies of or take extracts from, a document produced to him or her; and
- (c) to require a person, by notice, to produce to the inspector a document relevant to the purpose set out in subsection (1).

*When may the powers be exercised?*

- (3) An inspector may exercise the powers in subsection (2) at any time during ordinary working hours or at any other time at which it is necessary to do so for the purpose set out in subsection (1).
- (4) If a person who is required under subparagraph (2)(b)(iv) to produce a document contravenes the requirement, an inspector may, by written notice served on the person, require the person to produce the document at a specified place within a specified period (not being less than 14 days).
- (5) Where a document is produced to an inspector under paragraph (2)(c) or subsection (4), the inspector may:
  - (a) inspect, and make copies of or take extracts from, the document; and
  - (b) retain the document for such period as is necessary for the purpose of exercising powers or performing functions as an inspector.
- (6) During the period for which an inspector retains a document, the inspector must permit the person otherwise entitled to possession of the document, or a person authorised by the person, to inspect, and make copies of or take extracts from, the document at all reasonable times.

*Notices under paragraph (2)(c)*

- (7) The notice referred to in paragraph (2)(c) must:

- (a) be in writing; and
- (b) be served on the person; and
- (c) require the person to produce the document at a specified place within a specified period of not less than 14 days.

Service may be effected by sending the notice to the person's fax number.

*Person must produce document even if it may incriminate them*

- (8) A person is not excused from producing a document under paragraph (2)(c) on the ground that the production of the document may tend to incriminate the person.

*Limited use immunity for documents produced*

- (9) If an individual produces a document under paragraph (2)(c), the document produced and any information or thing (including any document) obtained as a direct or indirect consequence of the production of the document is not admissible in evidence against the individual in any criminal proceedings unless it is proceedings for an offence against section 305.
- (10) If an inspector proposing to enter, or being on, premises is required by the occupier to produce evidence of authority, the inspector is not entitled to enter or remain on the premises without producing to the occupier the inspector's identity card.

## **Subdivision D—Enforcement of minimum rate of pay**

### **543 Imposition and recovery of penalties**

- (1) If a person breaches subsection 541(1), a penalty may be imposed by the Court or a court of competent jurisdiction.
- (2) Subject to subsection (3), if:
- (a) 2 or more breaches of subsection 541(1) are committed by the same person; and
  - (b) the breaches arose out of a course of conduct by the person;

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the breaches are taken for the purposes of this section to constitute a single breach of that subsection.

- (3) Subsection (2) does not apply in relation to a breach of subsection 541(1) that is committed by the person after a court has imposed a penalty on the person for an earlier breach of that subsection.
- (4) The maximum penalty that may be imposed under subsection (1) for a breach of subsection 541(1) is:
  - (a) \$10,000 for a body corporate; or
  - (b) \$2,000 in other cases.
- (5) A penalty for a breach of subsection 541(1) may be sued for and recovered by:
  - (a) an inspector; or
  - (b) an individual to whom the obligation concerned was owed.
- (6) If, in a proceeding against a person under this section, it appears to the court that an individual has not been paid an amount that the person was required to pay, the court may order the person to pay to the individual the amount of the underpayment.
- (7) An order must not be made under subsection (6) in relation to so much of an underpayment as relates to any period more than 6 years before the commencement of the proceeding.
- (8) A proceeding under this section in relation to a breach of subsection 541(1) must be commenced not later than 6 years after the commission of the breach.

### **544 Recovery of pay**

If a person is required by subsection 541(1) to pay an amount to an individual, the individual may sue for the amount of the payment in the Court or in any court of competent jurisdiction not later than 6 years after the person was required to make the payment to him or her.

### **545 Interest up to judgment**

- (1) In exercising its powers under section 543 or in a proceeding under section 544, the Court or a court of competent jurisdiction must, on application:



- (a) order that there be included in the sum for which an order is made or judgment given, interest at such rate as the Court or court of competent jurisdiction (as the case requires) thinks fit on all or any part of the money for all or any part of the period between the date when the cause of action arose and the date on which the order is made or judgment entered; or
  - (b) without proceeding to calculate interest in accordance with paragraph (a), order that there be included in the sum for which an order is made or judgment given, a lump sum instead of any such interest.
- (2) Subsection (1) does not:
  - (a) authorise the giving of interest on interest or of a sum instead of such interest; or
  - (b) apply in relation to any debt on which interest is payable as of right whether by virtue of an agreement or otherwise; or
  - (c) authorise the giving of interest, or a sum instead of interest, except by consent, on any sum for which judgment is given by consent.
- (3) Subsection (1) does not apply if good cause is shown to the contrary.

#### **546 Interest on judgment**

A debt under a judgment or order of a court of competent jurisdiction made under section 543 or 544 carries interest from the date on which the judgment is entered or order made at such rate as would apply under section 52 of the *Federal Court of Australia Act 1976* if the debt were a judgment debt to which that section applies.

#### **547 Plaintiffs may choose small claims procedure in magistrates courts**

- (1) An action started by a person under section 544 in a magistrates court is to be dealt with in accordance with this section if the person indicates, in a manner prescribed by the regulations or by rules of court relating to that court, that he or she wants a small claims procedure to apply.
- (2) The procedure is governed by the following conditions:

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- (a) the court may not award an amount exceeding \$5,000 or such higher amount as is prescribed;
  - (b) the court may act in an informal manner, is not bound by any rules of evidence, and may act without regard to legal forms and technicalities;
  - (c) at any stage of the action, the court may amend the papers initiating the action if sufficient notice is given to any party adversely affected by the amendment;
  - (d) a person is not entitled to be represented by counsel or solicitor unless the court permits;
  - (e) if the court permits a party to be represented by counsel or solicitor, the court may, if it thinks fit, do so subject to conditions designed to ensure that no other party is unfairly disadvantaged.
- (3) If the case is heard in a court of a Territory, the regulations may (despite paragraphs (2)(d) and (e)) prohibit or restrict legal representation of the parties.
- (4) Despite paragraphs (2)(d) and (e), if:
- (a) the case is heard in a court of a State; and
  - (b) in a particular proceeding in that court (whatever the nature of the proceeding), the law of the State prohibits or restricts legal representation of the parties;
- regulations made under this Act may prohibit or restrict legal representation of the parties to the same extent as that law.

**548 Enforcement of penalties etc.**

- (1) If a court has:
- (a) imposed a monetary penalty under this Part (other than a penalty for an offence); or
  - (b) under subsection 543(6), ordered the payment of an amount; or
  - (c) ordered the payment of costs or expenses;
- a certificate signed by a registrar, specifying the amount payable and by whom and to whom respectively it is payable, may be filed in the Court or in any other court of competent jurisdiction.
- (2) A certificate filed in a court under subsection (1) is enforceable in all respects as a final judgment of the court in which it is filed.

- (3) If there are 2 or more creditors under a certificate, process may be issued separately by each creditor for the enforcement of the certificate as if there were separate judgments.

**549 Records relating to contracts for services with contract outworkers**

- (1) The regulations may make provision in relation to:
- (a) the making of outworker records by a person who is a party to a contract for services and who is subject to an obligation under subsection 541(1); and
  - (b) the making of outworker records by a contract outworker who is a party to a contract for services and to whom an obligation is owed under subsection 541(1) in relation to the contract; and
  - (c) the inspection of records mentioned in paragraphs (a) and (b); and
  - (d) the giving of records mentioned in paragraphs (a) and (b) (or a copy of them) by a party to the contract concerned to one or more other parties to the contract; and
  - (e) the retention of outworker records by parties to the contract concerned.
- (2) In subsection (1):
- outworker records***, in relation to a contract for services, means records relating to the contract to the extent that work to be performed under the contract meets the criteria in subsection 541(2).

## **Part XVII—School-based apprentices and trainees**

### **Division 1—Preliminary**

#### **550 Definitions**

In this Part:

***additional condition*** means a condition under a wage instrument other than a rate of pay.

***employee*** means an individual so far as he or she is employed, or usually employed, as described in the definition of ***employer*** in this section, by an employer, except on a vocational placement.

***employer*** means:

- (a) a constitutional corporation, so far as it employs, or usually employs, an individual; or
- (b) the Commonwealth, so far as it employs, or usually employs, an individual; or
- (c) a Commonwealth authority, so far as it employs, or usually employs, an individual; or
- (d) a person or entity (which may be an unincorporated club) so far as the person or entity, in connection with constitutional trade or commerce, employs, or usually employs, an individual as:
  - (i) a flight crew officer; or
  - (ii) a maritime employee; or
  - (iii) a waterside worker; or
- (e) a body corporate incorporated in a Territory, so far as the body employs, or usually employs, an individual; or
- (f) a person or entity (which may be an unincorporated club) that carries on an activity (whether of a commercial, governmental or other nature) in a Territory in Australia, so far as the person or entity employs, or usually employs, an individual in connection with the activity carried on in the Territory.

***full-time apprentice*** means a person employed on a full-time basis who is recognised, under the wage instrument that covers his or her employment, as an apprentice.

***full-time trainee*** means a person employed on a full-time basis under a training arrangement who is not a full-time apprentice.

***school-based apprentice*** means an employee:

- (a) whose employment is part of a school-based training arrangement; and
- (b) who would, if employed full-time under a training arrangement to do the same kind of work, in the same location and for the same employer, be a full-time apprentice.

***school-based trainee*** means an employee, other than a school-based apprentice, whose employment is part of a school-based training arrangement.

***school-based training arrangement*** means a training arrangement undertaken as part of a course of secondary education.

***State or Territory training authority*** means a body authorised by a law or award of a State or Territory for the purpose of overseeing arrangements for the training of employees.

***training arrangement*** means a combination of work and training that is subject to a training agreement or a training contract between the employee and employer that is registered:

- (a) with the relevant State or Territory training authority; or
- (b) under a law of a State or Territory relating to the training of employees.

***wage instrument*** means:

- (a) an award (as defined in subsection 4(1)), but not including:
  - (i) an order under section 120A; or
  - (ii) an award under section 170MX; or
- (b) a law, or a provision of a law, of the Commonwealth, being a law or provision that is specified, or is of a kind specified, in regulations made for the purposes of this paragraph; or
- (c) an instrument made under a law, or a provision of a law, of the Commonwealth, being an instrument that is specified, or is of a kind specified, in regulations made for the purposes of this paragraph; or

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- (d) a State award (as defined in subsection 4(1)); or
- (e) a law, or a provision of a law, of a State or Territory, being a law or provision that entitles employees, or a particular class of employees, to payment of a particular rate of pay; or
- (f) a law, or a provision of a law, of a State or Territory, being a law or provision that is specified, or is of a kind specified, in regulations made for the purposes of this paragraph; or
- (g) an instrument made under a law, or a provision of a law, of a State or Territory, being an instrument that is specified, or is of a kind specified, in regulations made for the purposes of this paragraph.

***work on-the-job***, in relation to a school-based apprentice or school-based trainee, means work that contributes directly to the productive output of the employer of the school-based apprentice or school-based trainee.

Note: So, for example, time spent studying or in other off-the-job training or education would not be ***work on-the-job*** for the purposes of this Part.

## **Division 2—Concurrent operation of State and Territory laws**

### **551 Concurrent operation of State and Territory laws**

This Part does not apply to the exclusion of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Part.

## **Division 3—School-based apprentices**

### **552 Pay for school-based apprentices**

*Rate of pay is an hourly rate for work on-the-job*

- (1) The rate of pay for a school-based apprentice is an hourly rate paid only for hours worked on-the-job and calculated using the formula:

$$\text{Full-time first-year apprentice hourly rate} \times \frac{125}{100}$$

where:

***full-time first-year apprentice hourly rate*** means:

- (a) the hourly rate of pay specified, in the applicable wage instrument, for a full-time first-year apprentice doing the same kind of work, in the same location and for the same employer as the school-based apprentice; or
- (b) if the rate of pay specified in the applicable wage instrument is not an hourly rate—that rate converted into an hourly rate.

*This section does not limit pay*

- (2) To avoid doubt, this section does not operate to prevent the school-based apprentice from receiving a rate of pay more generous than the rate calculated in accordance with subsection (1).

*School-based apprentices not covered by this section*

- (3) This section does not apply to a school-based apprentice if:
- (a) a wage instrument covers the work of the school-based apprentice; and
  - (b) the wage instrument specifies the rate of pay for the school-based apprentice; and
  - (c) the wage instrument does so by making specific provision for school-based apprentices.



### **553 Additional conditions for school-based apprentices**

#### *Additional conditions adjusted as necessary*

- (1) A school-based apprentice is entitled, in accordance with subsection (2), to any additional conditions (the **full-time conditions**) to which a full-time apprentice doing the same kind of work, in the same location and for the same employer would be entitled.
- (2) The school-based apprentice is entitled to the full-time conditions adjusted as necessary in proportion to the hours worked on-the-job by the school-based apprentice.
- (3) For the purposes of subsection (2), the regulations may determine, or make provision for determining, either or both of the following:
  - (a) whether particular full-time conditions should be adjusted in proportion to the hours worked on-the-job by the school-based apprentice;
  - (b) the method for adjusting particular full-time conditions in proportion to the hours worked on-the-job by the school-based apprentice.

#### *This section does not limit additional conditions*

- (4) To avoid doubt, this section does not operate to prevent the school-based apprentice from receiving conditions more generous than those provided by this section.

#### *School-based apprentices not covered by this section*

- (5) This section does not apply to a school-based apprentice if:
  - (a) a wage instrument covers the work of the school-based apprentice; and
  - (b) the wage instrument specifies the rate of pay for the school-based apprentice; and
  - (c) the wage instrument does so by making specific provision for school-based apprentices.

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**554 Pay for apprentices who were school-based apprentices**

- (1) Subsection (2) applies for the purposes of determining the rate of pay under a wage instrument for a full-time apprentice doing the same kind of work he or she did as a school-based apprentice.
- (2) The person's time as a full-time apprentice is taken to include the period calculated using the formula:

$$\text{Time as a school-based apprentice} \times \frac{1}{2}$$

where:

*time as a school-based apprentice* means the time for which the person was a school-based apprentice.

**Division 4—School-based trainees****555 Pay for school-based trainees**

*Rate of pay is an hourly rate for work on-the-job*

- (1) The rate of pay for a school-based trainee is the rate as follows, paid only for hours worked on-the-job:
  - (a) for a calendar year in which the school-based trainee is enrolled in a Year up to and including Year 11—\$7.27 per hour;
  - (b) for a calendar year in which the school-based trainee is enrolled in Year 12 or a later Year—\$7.99 per hour.

*This section does not limit pay*

- (2) To avoid doubt, this section does not operate to prevent the school-based trainee from receiving a rate of pay more generous than the rate specified by subsection (1).

*School-based trainees not covered by this section*

- (3) This section does not apply to a school-based trainee if:
  - (a) a wage instrument covers the work of the school-based trainee; and
  - (b) the wage instrument specifies the rate of pay for the school-based trainee; and
  - (c) the wage instrument does so by making specific provision for school-based trainees.

**556 Additional conditions for school-based trainees**

*Additional conditions adjusted as necessary*

- (1) A school-based trainee is entitled, in accordance with subsection (2), to any additional conditions (the ***full-time conditions***) to which a full-time trainee doing the same kind of work, in the same location and for the same employer would be entitled.

**Section 557**

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- (2) The school-based trainee is entitled to the full-time conditions adjusted as necessary in proportion to the hours worked on-the-job by the school-based trainee.
- (3) For the purposes of subsection (2), the regulations may determine, or make provision for determining, either or both of the following:
  - (a) whether particular full-time conditions should be adjusted in proportion to the hours worked on-the-job by the school-based trainee;
  - (b) the method for adjusting particular full-time conditions in proportion to the hours worked on-the-job by the school-based trainee.
- (4) Subsection (2) has effect subject to section 557.

*This section does not limit additional conditions*

- (5) To avoid doubt, this section does not operate to prevent a school-based trainee from receiving conditions more generous than those provided by this section.

*School-based trainees not covered by this section*

- (6) This section does not apply to a school-based trainee if:
  - (a) a wage instrument covers the work of the school-based trainee; and
  - (b) the wage instrument specifies the rate of pay for the school-based trainee; and
  - (c) the wage instrument does so by making specific provision for school-based trainees.

**557 Loading in lieu of certain conditions**

- (1) The employer of a school-based trainee may, with the written agreement of the school-based trainee, pay the school-based trainee a loading in lieu of paid annual leave, paid sick leave, paid personal leave and payment for public holidays.
- (2) The loading is payable for all hours worked on-the-job and is calculated using the formula:

$$\text{Hourly rate} \times \frac{20}{100}$$

where:

***hourly rate*** means the hourly rate paid to the school-based trainee apart from this section.

Note:       The loading does not compensate for work done on a public holiday.  
A school-based trainee who works on a public holiday would be paid the applicable hourly rate for such work.

## **Division 5—Enforcement**

### **558 Enforcement**

Part VIII has effect, in relation to a school-based apprentice or a school-based trainee who is entitled to be paid, or provided additional conditions, in accordance with subsection 552(1), 553(2), 555(1) or 556(2), as if the subsection were a term of an award:

- (a) that bound the employer of the school-based apprentice or school-based trainee; and
- (b) to which the employment of the school-based apprentice or school-based trainee was subject.

## **Schedule 1A—Minimum terms and conditions of employment**

Note 1: See section 500.

Note 2: This Schedule is based on Schedule 1 to the **Employee Relations Act 1992** of Victoria.

Note 3: The terms and conditions set out in this Schedule in respect of parental leave and termination of employment supplement those applicable under Part VIA—see subsection 500(2).

### **Part 1—General**

#### **1 Minimum terms and conditions of employment**

(1) The minimum terms and conditions of employment are:

- (a) except in the case of an employee engaged in casual work—paid annual leave for each year worked (see clause 1A for the calculation of the number of hours of annual leave and further details about taking this leave);
- (b) except in the case of an employee engaged in casual work—paid personal leave (see clauses 1B to 1D for the calculation of personal leave and further details about taking this leave);
- (ba) except in the case of an employee engaged in casual work—paid bereavement leave (see clause 1E for the details about taking this leave);
- (c) unless paragraph (ca) applies—the greater of:
  - (i) any minimum wage for the work classification of the employee applicable under section 501; and
  - (ii) the rate of pay that applied to the employee under paragraph 1(c) of Schedule 1 to the **Employee Relations Act 1992** of Victoria at the test time (see subclause (2)) or, if the employee was not employed in Victoria at that time, that would have so applied if the employee had commenced to be employed in Victoria at that time;
- (ca) if the employee's wages are set under the Supported Wage System—the supported wage rate for the employee worked out in accordance with the Supported Wage System;

Clause 1A

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- (d) subject to and in accordance with this Schedule, maternity, paternity or adoption leave and an entitlement to work part-time in connection with the birth or adoption of a child;
- (e) subject to and in accordance with this Schedule, an entitlement to be given notice of termination or compensation instead of notice;
- (f) if an employee works in excess of 38 hours in a working week—to be paid for the excess hours at the hourly rate set out in subclause (3).

- (2) In paragraph (1)(c):

*test time* means:

- (a) if paragraph 1(c) of Schedule 1 to the **Employee Relations Act 1992** of Victoria was in force at the commencement of this Schedule—the time at which this Schedule commenced; or
- (b) if that paragraph was not so in force—immediately before that paragraph ceased to be in force.

*Rate of pay for hours in excess of 38*

- (3) Unless an employee and employer agree to a higher hourly rate of pay, the rate of pay for hours that an employee works in excess of 38 hours in a working week is the hourly rate for the work classification of the employee applicable under section 501 or 501A.

**1A Annual leave**

*Calculation of annual leave*

- (1) An employee is entitled to annual leave, for each year worked, of the number of hours calculated by multiplying by 4 the usual number of ordinary hours worked by the employee per week during the year.
- (1A) However, if the variations from week to week in the number of ordinary hours worked by the employee during the year are such that there is no such usual number of hours, the employee is entitled to annual leave, for that year, of the number of hours calculated by:



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Clause 1A

- (a) working out the average number of ordinary hours per week the employee worked during the year; and
  - (b) multiplying that number of hours by 4.
- (1B) For the purposes of subclauses (1) and (1A):
- (a) hours when the employee is absent from work on paid leave, including (but not limited to) paid annual leave, paid personal leave or paid bereavement leave; and
  - (b) hours when the employee is absent from work because of a public holiday (being ordinary hours the employee would otherwise have been required to work on that day);
- are to be counted as if they were ordinary hours worked by the employee.

*Rules about annual leave*

- (2) Annual leave:
- (a) accrues on a pro-rata basis and is cumulative; and
  - (b) is credited on the anniversary of the employee's employment; and
  - (c) counts as service for all purposes; and
  - (d) is to be paid at the rate that, immediately before the leave is taken, is the employee's ordinary hourly rate of pay; and
  - (e) is to be paid when the employee takes annual leave or leaves his or her employment, as the case may be; and
  - (f) must be taken within 12 months after the end of the year in which it accrued unless the employee and the employer have agreed otherwise; and
  - (g) must be taken by an employee when directed to take it by the employer, if the employer directs the employee to do so because the employer shuts down his or her business for a period.

Note: One situation in which an employee's annual leave entitlement will be affected by pro-rating as mentioned in paragraph (a) is when the employee is employed for less than a full year.

Clause 1B

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**1B Personal leave**

*When personal leave may be used*

- (1) Subject to clauses 1C and 1D, an employee is entitled to paid personal leave when he or she is absent from work in the following circumstances:
- (a) due to personal illness or injury (*sick leave*);
  - (b) for the purposes of caring for a member of the employee's immediate family or member of the employee's household who is sick and requires the employee's care and support (*carer's leave*).

Note: For *immediate family* see clause 1F.

*When personal leave is to be paid*

- (2) Personal leave is to be paid when an employee takes personal leave.

*Accrual of personal leave credit*

- (3) An employee accrues personal leave as follows:
- (a) if the employee has worked for the employer for less than 12 months—one day for each completed 6 weeks;
  - (b) if the employee has worked for the employer for 12 months or more—8 days for each year.

Employees who work part-time accrue personal leave on a pro-rata basis.

*Accumulation of personal leave*

- (4) At the end of each year of employment, an employee's unused personal leave accrues by the lesser of:
- (a) 8 days; or
  - (b) the balance of the employee's unused personal leave.

**1C Sick leave**

*Employee's responsibilities*

- (1) An employee's entitlement to sick leave is conditional on the employee promptly notifying the employer of:

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Clause 1D

- (a) any illness or injury that will cause him or her to be absent from work; and
- (b) the approximate period of that absence.

*Employer may require medical certificate etc.*

- (2) If required by the employer, an employee who takes sick leave must establish by producing a medical certificate or making a statutory declaration that he or she was unable to work because of injury or personal illness.

*Post sick leave payment*

- (3) After the first 5 months of service, an employee must be paid for any sick leave taken during that period to which he or she was not entitled, due to insufficient service, up to a maximum of 4 days.

*Sick leave and workers' compensation*

- (4) An employee is not entitled to take sick leave during any period for which he or she is receiving compensation payable under a law relating to workers' compensation.

## **1D Carer's leave**

*Up to 5 days' personal leave may be taken as carer's leave*

- (1) An employee is entitled to use up to 5 days' personal leave each year to care for a member of his or her immediate family or a member of his or her household who is ill and requires the employee's care and support. However, an employee is not entitled to take carer's leave for a particular period if another person has taken leave to care for the person for the same period.

*Employee's responsibility*

- (2) An employee's entitlement to carer's leave is conditional on the employee promptly notifying the employer of his or her inability to attend for duty.

**Clause 1E**

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*Employer may require medical certificate etc.*

- (3) If required by the employer, an employee who takes carer's leave must establish by producing a medical certificate, or making a statutory declaration:
- (a) the nature of the illness of the person cared for; and
  - (b) the need of that person for care and support by another person.

**1E Bereavement leave**

- (1) An employee is entitled to take up to 2 days' paid bereavement leave on the death of a member of the employee's immediate family or household. The 2 days need not be consecutive.

Note: For *immediate family* see clause 1F.

- (2) The employee must give the employer such evidence of the death as the employer reasonably requires.

**1F Definitions**

In this Part:

*de facto spouse*, in relation to an employee, means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis.

*immediate family*, in relation to an employee, includes:

- (a) a spouse of the employee (including a former spouse, a de facto spouse and a former de facto spouse); and
- (b) a child (including an adopted child, a step-child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

## **Part 2—Maternity leave**

### **2 Nature of leave**

Maternity leave is unpaid leave.

### **3 Definitions**

In this Part:

***child*** means a child of the employee under the age of one year.

***confinement***, in relation to a female employee, means confinement caused by the birth of a child or other termination of a pregnancy.

***continuous service*** means service under an unbroken contract of employment and includes:

- (a) any period of leave taken in accordance with this Part; and
- (b) any period of leave or absence authorised by the employer or by an employment agreement; and
- (c) any period of part-time employment in accordance with Part 5 (including part-time employment as a replacement employee).

***employee*** includes a part-time employee but does not include an employee engaged in casual or seasonal work.

***expected date of confinement***, in relation to a female employee, means a date certified by a registered medical practitioner to be the date on which the registered medical practitioner expects the employee to be confined in respect of her pregnancy.

***paternity leave*** means leave of the type provided for by Part 3, whether prescribed by an employment agreement or otherwise.

***spouse*** includes a de facto spouse and a former spouse.

Clause 4

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**4 Eligibility for maternity leave**

- (1) An employee who becomes pregnant is, on production to her employer of the certificate required by clause 5, entitled to a period of up to 52 weeks of maternity leave.
- (2) However, any such maternity leave may not extend beyond the child's first birthday.
- (3) The entitlement to maternity leave under this clause is to be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child. Apart from paternity leave of up to one week at the time of confinement, maternity leave is not to be taken concurrently with paternity leave.
- (4) Subject to clauses 7 and 10, the period of maternity leave is to be unbroken and must, immediately following confinement, include a period of 6 weeks of compulsory leave.
- (5) An employee must have had at least 12 months of continuous service with her employer immediately preceding the date on which she commences maternity leave.

**5 Certification**

When applying for maternity leave, an employee must, at the times specified in clause 6, produce to her employer:

- (a) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (b) a statutory declaration:
  - (i) stating particulars of any period of paternity leave sought or taken by her spouse; and
  - (ii) stating her agreement that for the period of her maternity leave she will not engage in any conduct inconsistent with her contract of employment.

**6 Notice requirements**

- (1) An employee must, not less than 10 weeks before the expected date of confinement, produce to her employer the certificate referred to in paragraph 5(a).

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Clause 7

- (2) An employee must, not less than 4 weeks before she proposes to commence maternity leave, produce to her employer the statutory declaration referred to in paragraph 5(b).
- (3) An employer, by not less than 14 days' notice in writing to the employee, may require her to commence maternity leave at any time within the 6 weeks immediately before her expected date of confinement.
- (4) An employee is not in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (2) if the failure is caused by the confinement occurring earlier than the expected date.

## **7 Transfer to a safe job**

- (1) If, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employer must, if the employer deems it practicable, transfer the employee to a safe job at the rate and on the conditions attaching to her present work until the commencement of maternity leave.

Note: This is a penalty provision: see section 533 and the definition of *penalty provision* in section 489.

- (2) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave on full pay for such period as is certified necessary by a registered medical practitioner. Such leave is not to be treated as maternity leave for the purposes of this Part.

## **8 Variation of period of maternity leave**

- (1) So long as the maximum period of maternity leave does not exceed the period to which the employee is entitled under clause 4:
  - (a) the period of maternity leave may be lengthened once only by the employee giving to her employer not less than 14 days' notice in writing stating the period by which the leave is to be lengthened; and
  - (b) the period may be further lengthened by agreement between the employer and the employee.

Clause 9

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- (2) The period of maternity leave may, with the consent of her employer, be shortened by the employee giving to her employer not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

**9 Cancellation of maternity leave**

- (1) Maternity leave, applied for but not commenced, is cancelled should the pregnancy of an employee terminate otherwise than by the birth of a living child.
- (2) If the pregnancy of an employee then on maternity leave terminates otherwise than by the birth of a living child, it is the right of the employee to resume work at a time nominated by the employer which must be no later than 4 weeks after the date of notice in writing by the employee to the employer that she desires to resume work.

**10 Special maternity leave and sick leave**

- (1) If the pregnancy of an employee not then on maternity leave terminates within 28 weeks before her expected date of confinement otherwise than by the birth of a living child, then:
  - (a) she is entitled to such period of unpaid leave (*special maternity leave*) as a registered medical practitioner certifies to be necessary before her return to work; or
  - (b) for illness other than the normal consequences of confinement she is entitled, either instead of or in addition to special maternity leave, to such paid sick leave as she is then entitled to and as a registered medical practitioner certifies to be necessary before her return to work.
- (2) If an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as she is then entitled to and such further unpaid leave (*special maternity leave*) as a registered medical practitioner certifies to be necessary before her return to work.
- (3) For the purposes of this Part, maternity leave includes special maternity leave.
- (4) An employee returning to work after the completion of a period of leave taken under this clause is entitled to the position which she



held immediately before commencing that leave or, in the case of an employee who was transferred to a safe job under clause 7, to the position which she held immediately before that transfer.

- (5) If that position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employer must make available to the employee a position as nearly as possible comparable in status and pay to that of her former position.

Note: This is a penalty provision: see section 533 and the definition of *penalty provision* in section 489.

## **11 Maternity leave and other leave entitlements**

- (1) So long as the aggregate of any leave, including leave taken under this Part, does not exceed the period to which the employee is entitled under clause 4, an employee may, instead of or in conjunction with maternity leave, take any annual leave or long service leave or any part of it to which she is entitled.
- (2) Paid sick leave or other paid absences authorised by an employment agreement (excluding annual leave or long service leave) are not available to an employee during her absence on maternity leave.

## **12 Effect of maternity leave on employment**

Subject to this Part, despite any employment agreement or other provision to the contrary, absence on maternity leave does not break the continuity of service of an employee but is not to be taken into account in calculating the period of service for any purpose of any relevant employment agreement.

## **13 Termination of employment**

- (1) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with any relevant employment agreement.
- (2) An employer must not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Part.

Clause 14

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Note: This is a penalty provision: see section 533 and the definition of *penalty provision* in section 489.

**14 Return to work after maternity leave**

- (1) An employee must confirm her intention of returning to work by notice in writing to the employer given not less than 4 weeks before the end of her period of maternity leave.
- (2) An employee, on returning to work after maternity leave or the expiration of the notice required by subclause (1), is entitled:
  - (a) to the position which she held immediately before commencing maternity leave; or
  - (b) in the case of an employee who was transferred to a safe job under clause 7, to the position which she held immediately before that transfer; or
  - (c) in the case of an employee who has worked part-time during the pregnancy, to the position which she held immediately before commencing the part-time employment.
- (3) If the position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employer must make available to the employee a position as nearly as possible comparable in status and pay to that of her former position.

Note: This is a penalty provision: see section 533 and the definition of *penalty provision* in section 489.

**15 Replacement employees**

- (1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (2) Before an employer engages a replacement employee, the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Note: This is a penalty provision: see section 533 and the definition of *penalty provision* in section 489.

- (3) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this Part, the employer must

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Clause 15

inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

Note: This is a penalty provision: see section 533 and the definition of *penalty provision* in section 489.

- (4) Nothing in this Part is to be construed as requiring an employer to engage a replacement employee.

Clause 16

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## Part 3—Paternity leave

### 16 Nature of leave

Paternity leave is unpaid leave.

### 17 Definitions

In this Part:

**child** means a child of the employee or the employee's spouse under the age of one year.

**confinement**, in relation to an employee's spouse, means the spouse's confinement caused by the birth of a child or other termination of a pregnancy.

**continuous service** means service under an unbroken contract of employment and includes:

- (a) any period of leave taken in accordance with this Part; and
- (b) any period of leave or absence authorised by the employer or by an employment agreement; and
- (c) any period of part-time employment in accordance with Part 5 (including part-time employment as a replacement employee).

**employee** includes a part-time employee, but does not include an employee engaged in casual or seasonal work.

**expected date of confinement**, in relation to an employee's spouse, means a date certified by a registered medical practitioner to be the date on which the registered medical practitioner expects the spouse to be confined in respect of her pregnancy.

**maternity leave** means leave of the type provided for by Part 2 (and includes special maternity leave), whether prescribed by an employment agreement or otherwise.

**primary care-giver** means a person who assumes the principal role of providing care and attention to a child.

*spouse* includes a de facto spouse and a former spouse.

## **18 Eligibility for paternity leave**

- (1) A male employee is, on production to his employer of the certificate required by paragraph 19(a), entitled to one or two periods of paternity leave, the total of which must not exceed 52 weeks, in the following circumstances:
  - (a) an unbroken period of up to one week at the time of confinement of his spouse (*short paternity leave*);
  - (b) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child if the leave does not extend beyond the child's first birthday (*extended paternity leave*). This entitlement is to be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and is not to be taken concurrently with that maternity leave.
- (2) An employee must have had at least 12 months of continuous service with his employer immediately preceding the date on which he commences either period of leave.

## **19 Certification**

When applying for paternity leave, an employee must, at the times specified in clause 20, produce to his employer:

- (a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
- (b) in relation to any period of extended paternity leave to be taken, a statutory declaration:
  - (i) stating that he is seeking that period of paternity leave to become the primary care-giver of a child; and
  - (ii) stating particulars of any period of maternity leave sought or taken by his spouse; and
  - (iii) stating his agreement that for the period of his paternity leave he will not engage in any conduct inconsistent with his contract of employment.

Clause 20

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**20 Notice requirements**

- (1) An employee must, not less than 10 weeks before each proposed period of leave, give his employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required by clause 19.
- (2) An employee is not in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (1) if the failure is caused by:
  - (a) the birth occurring earlier than the expected date; or
  - (b) the death of the mother of the child; or
  - (c) other compelling circumstances.
- (3) The employee must immediately notify his employer of any change in the information provided under clause 19.

**21 Variation of period of paternity leave**

- (1) So long as the maximum period of paternity leave does not exceed the period to which the employee is entitled under clause 18:
  - (a) the period of extended paternity leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened; and
  - (b) the period may be further lengthened by agreement between the employer and the employee.
- (2) The period of extended paternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

**22 Cancellation of paternity leave**

Extended paternity leave, applied for but not commenced, is cancelled when the pregnancy of the employee's spouse terminates otherwise than by the birth of a living child.

## **23 Paternity leave and other leave entitlements**

- (1) So long as the aggregate of any leave, including leave taken under this Part, does not exceed the period to which the employee is entitled under clause 18, an employee may, instead of or in conjunction with paternity leave, take any annual leave or long service leave or any part of it to which he is entitled.
- (2) Paid sick leave or other paid absence authorised by an employment agreement (excluding annual leave or long service leave) is not available to an employee during his absence on paternity leave.

## **24 Effect of paternity leave on employment**

Subject to this Part, despite any employment agreement or other provision to the contrary, absence on paternity leave does not break the continuity of service of an employee but is not to be taken into account in calculating the period of service for any purpose of any relevant employment agreement.

## **25 Termination of employment**

- (1) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with any relevant employment agreement.
- (2) An employer must not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Part.

Note: This is a penalty provision: see section 533 and the definition of *penalty provision* in section 489.

## **26 Return to work after paternity leave**

- (1) An employee must confirm his intention of returning to work by notice in writing to the employer given not less than 4 weeks before the end of the period of extended paternity leave.
- (2) An employee, on returning to work after paternity leave or the expiration of the notice required by subclause (1) is entitled:
  - (a) to the position which he held immediately before commencing paternity leave; or

Clause 27

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- (b) in the case of an employee who has worked part-time in connection with the birth of the child, to the position which he held immediately before commencing the part-time employment.
- (3) If the position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employer must make available to the employee a position as nearly as possible comparable in status and pay to that of his former position.

Note: This is a penalty provision: see section 533 and the definition of *penalty provision* in section 489.

## **27 Replacement employees**

- (1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (2) Before an employer engages a replacement employee, the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Note: This is a penalty provision: see section 533 and the definition of *penalty provision* in section 489.

- (3) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this Part, the employer must inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

Note: This is a penalty provision: see section 533 and the definition of *penalty provision* in section 489.

- (4) Nothing in this Part is to be construed as requiring an employer to engage a replacement employee.



## **Part 4—Adoption leave**

### **28 Nature of leave**

Adoption leave is unpaid leave.

### **29 Definitions**

In this Part:

**child**, in relation to an employee, means a person under the age of 5 years who is placed with the employee for the purposes of adoption and who has not previously lived continuously with the employee for a period of 6 months or more or is not a child or step-child of the employee or of the spouse of the employee.

**continuous service** means service under an unbroken contract of employment and includes:

- (a) any period of leave taken in accordance with this Part; and
- (b) any period of leave or absence authorised by the employer or by any relevant employment agreement; and
- (c) any period of part-time employment in accordance with Part 5 (including part-time employment as a replacement employee).

**employee** includes a part-time employee, but does not include an employee engaged in casual or seasonal work.

**primary care-giver** means a person who assumes the principal role of providing care and attention to a child.

**relative adoption** occurs where a child is adopted by a parent, a spouse of a parent or another relative, being a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).

**spouse** includes a de facto spouse and a former spouse.

Clause 30

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**30 Eligibility for adoption leave**

- (1) An employee is, on production to the employer of the documentation required by clause 31, entitled to one or two periods of adoption leave, the total of which must not exceed 52 weeks, in the following circumstances:
  - (a) an unbroken period of up to 3 weeks at a time of the placement of the child (*short adoption leave*);
  - (b) an unbroken period of up to 52 weeks from the time of the placement of the child in order to be the primary care-giver of the child (*extended adoption leave*). This entitlement is to be reduced by:
    - (i) any period of short adoption leave taken; and
    - (ii) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse in relation to the same child;but extended adoption leave is not to extend beyond one year after the placement of the child and is not to be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child.
- (2) The employee must have had at least 12 months of continuous service with his or her employer immediately preceding the date on which he or she commences either period of leave.

**31 Certification**

- (1) Before taking adoption leave, the employee must produce to the employer:
  - (a) a statement from an adoption agency or another appropriate body of the expected date of placement of the child with the employee for adoption purposes; or
  - (b) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (2) In relation to any period of extended adoption leave to be taken, the employee must also produce a statutory declaration:
  - (a) stating that the employee is seeking that period of adoption leave to become the primary care-giver of the child; and

- (b) stating particulars of any period of adoption leave sought or taken by the employee's spouse; and
- (c) stating the employee's agreement that for the period of his or her adoption leave he or she will not engage in any conduct inconsistent with his or her contract of employment.

### **32 Notice requirements**

- (1) On receiving notice of approval for adoption purposes, an employee must notify his or her employer of the approval and, within 2 months after receiving notice of the approval, must further notify the employer of the period or periods of adoption leave which the employee proposes to take. In the case of a relative adoption, the employee must so notify the employer on deciding to take a child into custody pending an application for an adoption order.
- (2) An employee who commences employment with an employer after the date of approval for adoption purposes must notify the employer of that date on commencing employment and of the period of adoption leave which the employee proposes to take. Such an employee is not entitled to adoption leave unless he or she has not less than 12 months of continuous service with that employer immediately preceding the date on which he or she commences the leave.
- (3) An employee must, as soon as he or she is aware of the expected date of placement of a child for adoption purposes but no later than 14 days before the expected date of placement, give notice in writing to his or her employer of that date, and of the date of commencement of any period of short adoption leave to be taken.
- (4) An employee must, at least 10 weeks before the proposed date of commencing any period of extended adoption leave to be taken, give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (5) An employee is not in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (3) or (4) if the failure is caused by:
  - (a) the requirement of an adoption agency for the employee to accept earlier or later placement of a child; or
  - (b) the death of his or her spouse; or

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- (c) other compelling circumstances.

**33 Variation of period of adoption leave**

- (1) So long as the maximum period of adoption leave does not exceed the period to which the employee is entitled under clause 30:
  - (a) the period of extended adoption leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened; and
  - (b) the period may be further lengthened by agreement between the employer and the employee.
- (2) The period of extended adoption leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

**34 Cancellation of adoption leave**

- (1) Adoption leave, applied for but not commenced, is cancelled should the placement of the child not proceed.
- (2) If the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee must notify the employer forthwith and the employer must nominate a time not exceeding 4 weeks from receipt of the notification for the resumption of work by the employee.

**35 Special leave**

- (1) The employer must grant to any employee who is seeking to adopt a child any unpaid leave not exceeding 2 days that is required by the employee to attend any compulsory interviews or examinations that are necessary as part of the adoption procedure.
- (2) If paid leave is available to the employee, the employer may require the employee to take such leave instead of special leave.

**36 Adoption leave and other entitlements**

- (1) So long as the aggregate of any leave, including leave taken under this Part, does not exceed the period to which the employee is

entitled under clause 30, an employee may, instead of or in conjunction with adoption leave, take any annual leave or long service leave or any part of it to which he or she is entitled.

- (2) Paid sick leave or other paid absence authorised by an employment agreement (excluding annual leave or long service leave) is not available to an employee during the employee's absence on adoption leave.

### **37 Effect of adoption leave on employment**

Subject to this Part, despite any employment agreement or other provision to the contrary, absence on adoption leave does not break the continuity of service of an employee but is not to be taken into account in calculating the period of service for any purpose of any relevant employment agreement.

### **38 Termination of employment**

- (1) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with any relevant employment agreement.
- (2) An employer must not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not affected by this Part.

Note: This is a penalty provision: see section 533 and the definition of *penalty provision* in section 489.

### **39 Return to work after adoption leave**

- (1) An employee must confirm his or her intention of returning to work by notice in writing to the employer given not less than 4 weeks before the end of the period of extended adoption leave.
- (2) An employee, on returning to work after adoption leave, is entitled:
  - (a) to the position which he or she held immediately before commencing adoption leave; or
  - (b) in the case of an employee who has worked part-time in connection with the adoption of the child, to the position

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which he or she held immediately before commencing the part-time employment.

- (3) If the position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employer must make available to the employee a position as nearly as possible comparable in status and pay to that of the employee's former position.

Note: This is a penalty provision: see section 533 and the definition of *penalty provision* in section 489.

**40 Replacement employees**

- (1) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (2) Before an employer engages a replacement employee, the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Note: This is a penalty provision: see section 533 and the definition of *penalty provision* in section 489.

- (3) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his or her rights under this Part, the employer must inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

Note: This is a penalty provision: see section 533 and the definition of *penalty provision* in section 489.

- (4) Nothing in this Part is to be construed as requiring an employer to engage a replacement employee.

## **Part 5—Part-time employment**

### **41 Definitions**

In this Part:

***continuous service*** means service under an unbroken contract of employment and includes:

- (a) any period of part-time employment in accordance with this Part (including part-time employment as a replacement employee); and
- (b) any period of leave or absence authorised by the employer or by any relevant employment agreement.

***female employee*** means an employed female who is pregnant or is caring for a child whom she has borne or a child who has been placed with her for adoption purposes.

***former position*** means the position held by an employee immediately before commencing part-time employment under this Part or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly as possible comparable in status and pay to that of the position held by the employee immediately before commencing part-time employment.

***male employee*** means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes.

***part-time employment*** means work of a lesser number of hours than constitutes full-time work under the relevant employment agreement, but does not include casual or temporary work.

***spouse*** includes a de facto spouse and a former spouse.

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**42 Entitlement**

With the agreement of the employer:

- (a) a female employee may work part-time in one or more periods while she is pregnant if part-time employment is, because of the pregnancy, necessary or desirable;
- (b) a female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until the child's second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement;
- (c) a male employee may work part-time in one or more periods at any time from the date of birth of the child until the child's second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.

**43 Return to former position**

- (1) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the end of the period of part-time employment or the first period, if there is more than one, the right to return to his or her former position.
- (2) Nothing in subclause (1) prevents the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

**44 Effect of part-time employment on continuous service**

Despite any employment agreement or other provision to the contrary, commencement on part-time employment under this Part, and return from part-time employment to full-time employment under this Part, does not break the continuity of service of an employee.

**45 Pro rata entitlements**

Subject to this Part and the matters agreed in the part-time employment agreement under clause 48, part-time employment is



to be, pro rata, in accordance with the provisions of any employment agreement applicable to the work concerned.

#### **46 Transitional arrangements—annual leave**

- (1) An employee working part-time under this Part is to be paid for and take any annual leave accrued in respect of a period of full-time employment, in such periods and manner as is specified in the annual leave provisions of the employment agreement applicable of the work concerned, as if the employee were working full-time in the class or work the employee was performing as a full-time employee immediately before commencing part-time employment under this Part.
- (2) A full-time employee is to be paid for and take any annual leave accrued in respect of a period of part-time employment under this Part, in such periods and manner as is specified in the annual leave provisions of the employment agreement applicable to the work concerned, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.
- (3) By agreement between the employer and the employee, the period over which leave is taken under subclause (2) may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

#### **47 Transitional arrangements—sick leave**

- (1) An employee working part-time under this Part is to have sick leave entitlements which have accrued under the employment agreement applicable to the work concerned (including any entitlement accrued in respect of previous full-time employment) converted into hours.
- (2) When this entitlement is used, whether as a part-time employee or as a full-time employee, it is to be debited for the ordinary hours that the employee would have worked during the period of absence.

Clause 48

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**48 Part-time employment agreement**

- (1) Before commencing a period of part-time employment under this Part the employee and the employer must agree:
  - (a) that the employee may work part-time; and
  - (b) on the hours to be worked by the employee, the days on which they will be worked and commencing times for the work; and
  - (c) on the classification applying to the work to be performed; and
  - (d) on the period of part-time employment.
- (2) The terms of this agreement may be varied by consent.
- (3) The terms of this agreement or any variation to it must be put in writing and retained by the employer. A copy of the agreement and any variation to it must be provided to the employee by the employer.

**49 Termination of employment**

- (1) The employment of a part-time employee under this Part may be terminated in accordance with the provisions of this Part but must not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this Part or has enjoyed or proposes to enjoy any benefits arising under this Part.
- (2) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this Part, or while working full-time after transferring from part-time employment under this Part, are to be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of a full-time employment and all service as a part-time employee as qualifying on a pro rata basis.

**50 Extension of hours of work**

An employer may request, but not require, an employee working part-time under this Part to work overtime.

## **51 Nature of part-time employment**

The work to be performed part-time need not be the work performed by the employee in his or her former position but must be work otherwise performed under any relevant employment agreement.

## **52 Inconsistent employment agreement provisions**

An employee may work part-time under this Part despite any other provision of any relevant employment agreement which limits or restricts the circumstances in which part-time employment may be worked or the terms on which it may be worked including any provision:

- (a) limiting the number of employees who may work part-time; or
- (b) establishing quotas as to the ratio of part-time to full-time employees; or
- (c) prescribing a minimum or maximum number of hours a part-time employee may work; or
- (d) requiring consultation with, the consent of or monitoring by, an association of employees;

and such provisions do not apply to part-time employment under this Part.

## **53 Replacement employees**

- (1) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this Part.
- (2) A replacement employee may be employed part-time. Subject to this clause, clauses 45 to 49 and 52 apply to the part-time employment of a replacement employee.
- (3) Before an employer engages a replacement employee under this Part, the employer must inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.

Note: This is a penalty provision: see section 533 and the definition of *penalty provision* in section 489.

Clause 53

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- (4) Nothing in this Part is to be construed as requiring an employer to engage a replacement employee.

## **Part 6—Requirements for lawful termination of employment**

### **54 Employee to be given notice of termination**

- (1) An employer must not terminate an employee's employment unless:
  - (a) the employee has been given either the period of notice required by this clause, or compensation instead of notice; or
  - (b) the employee is guilty of serious misconduct, that is, misconduct of a kind such that it would be unreasonable to require the employer to continue the employment during the notice period.
- (2) The required period of notice is first worked out using this table:

<b>Employee's period of continuous service with the employer</b>	<b>Period of notice</b>
Not more than 1 year	At least 1 week
More than 1 year but not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

- (3) The period of notice is increased by one week if the employee is over 45 years old and has completed at least 2 years continuous service with the employer.
- (4) The regulations may prescribe events or other matters that must be disregarded, or must in prescribed circumstances be disregarded, in ascertaining a period of continuous service for the purposes of subclauses (2) and (3).
- (5) The amount of compensation instead of notice must equal or exceed the total of all amounts that, if the employee's employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of the employment continuing during that period.
- (6) The total must be worked out on the basis of:

**Clause 55**

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- (a) the employee's ordinary hours of work (even if they are not standard hours); and
  - (b) the amounts payable to the employee in respect of those hours, including (for example) allowances, loadings and penalties; and
  - (c) any other amounts payable under the employee's employment agreement or other contract of employment.
- (7) The following employees are excluded from the operation of this clause:
  - (a) an employee of a kind referred to in subparagraph 39(1)(a)(ii), (iii), (iv) or (v) of the **Employee Relations Act 1992** of Victoria:
    - (i) if that subparagraph was in force at the commencement of this Schedule—at the commencement of this Schedule; or
    - (ii) if that subparagraph was not so in force—immediately before that subparagraph ceased to be in force;
  - (b) an employee of a kind specified in an Order, made for the purposes of paragraph 54(7)(b) of Schedule 1 to that Act by the Governor of Victoria in Council and published in the Government Gazette of Victoria, where the Order was in force:
    - (i) if that paragraph was in force at the commencement of this Schedule—at the commencement of this Schedule; or
    - (ii) if that paragraph was not so in force—immediately before that paragraph ceased to be in force.

**55 Employer to be given notice of termination**

- (1) An employee must not terminate his or her employment unless the employer has been given the period of notice required by this clause.
- (2) The required period of notice is:
  - (a) the period of notice required by the relevant employment agreement or other contract of employment; or
  - (b) if no period of notice is applicable under paragraph (a), a period of notice equal to the employee's usual pay period.

## **Schedule 1B—Registration and Accountability of Organisations**

Note: See section 4A

### **Chapter 1—Objects of Schedule and general provisions**

#### **1 Simplified outline of Chapter**

This Chapter sets out the objects of the Schedule and contains other provisions that are relevant to the Schedule as a whole.

It includes definitions of terms that are used throughout the Schedule. However, not all definitions are in this Chapter. Definitions of terms that are used only in a particular area of the Schedule, or only in one section of the Schedule, are generally defined in that area or section.

#### **5 Objects of Schedule**

The principal objects of this Schedule are to:

- (a) ensure that employee and employer organisations registered under this Schedule are representative of and accountable to their members, and are able to operate effectively; and
- (b) encourage members to participate in the affairs of organisations to which they belong; and
- (c) encourage the efficient management of organisations and high standards of accountability of organisations to their members; and
- (d) provide for the democratic functioning and control of organisations.

Note: The Workplace Relations Act contains many provisions that affect the operation of this Schedule. For example, provisions of the Workplace Relations Act deal with the powers and functions of the Commission and of Registrars. Decisions made under this Schedule may be subject

## Section 5A

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to procedures and rules (for example about appeals) that are set out in the Workplace Relations Act.

### 5A Schedule binds Crown

- (1) This Schedule binds the Crown in each of its capacities.
- (2) However, this Schedule does not make the Crown liable to be prosecuted for an offence.

## 6 Definitions

In this Schedule, unless the contrary intention appears:

**AEC** means the Australian Electoral Commission.

Note: Section 11 is also relevant to this definition.

**approved auditor** has the meaning given by the regulations.

**auditor**, in relation to a reporting unit, means:

- (a) the person who is the holder of the position of auditor of the reporting unit under section 256; or
- (b) where a firm is the holder of the position—each person who is, from time to time, a member of the firm and is an approved auditor.

**Australian Accounting Standards** means the accounting standards:

- (a) issued by the Australian Accounting Standards Board; or
- (b) issued by CPA Australia and by The Institute of Chartered Accountants in Australia and adopted by the Australian Accounting Standards Board;

as in force, or applicable, from time to time, as modified by regulations made for the purpose of this definition.

**Australian Auditing Standards** means the auditing and assurance standards issued by CPA Australia and The Institute of Chartered Accountants in Australia as in force, or applicable, from time to time.

**AWA** means an Australian workplace agreement under Part VID of the Workplace Relations Act.



**award** means an award or order that has been reduced to writing under subsection 143(1) of the Workplace Relations Act, but does not include an order made by the Commission in a proceeding under Subdivision B of Division 3 of Part VIA of that Act.

**breach** includes non-observance.

**certified agreement** means an agreement certified under Division 4 of Part VIB of the Workplace Relations Act.

**civil penalty provision** has the meaning given by subsection 305(2).

**collective body** means:

- (a) in relation to an organisation—the committee of management or a conference, council, committee, panel or other body of or within the organisation; and
- (b) in relation to a branch of an organisation—the committee of management or a conference, council, committee, panel or other body of or within the branch.

**collegiate electoral system**, in relation to an election for an office in an organisation, means a method of election comprising a first stage, at which persons are elected to a number of offices by a direct voting system, and a subsequent stage or subsequent stages at which persons are elected by and from a body of persons consisting only of:

- (a) persons elected at the last preceding stage; or
- (b) persons elected at the last preceding stage and other persons (being in number not more than 15% of the number of persons comprising the body) holding offices in the organisation (including the office to which the election relates), not including any person holding such an office merely because of having filled a casual vacancy in the office within the last 12 months, or the last quarter, of the term of the office.

**Commission** means the Australian Industrial Relations Commission established under section 8 of the Workplace Relations Act.

**committee of management**:

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- (a) in relation to an organisation, association or branch of an organisation or association, means the group or body of persons (however described) that manages the affairs of the organisation, association or branch; and
- (b) in relation to a reporting unit, means the group or body of persons (however described) that, under the rules of the reporting unit, is responsible for undertaking the functions necessary to enable the reporting unit to comply with Part 3 of Chapter 8.

***Commonwealth authority*** means:

- (a) a body corporate established for a public purpose by or under a law of the Commonwealth or the Australian Capital Territory; or
- (b) a body corporate:
  - (i) incorporated under a law of the Commonwealth or a State or Territory; and
  - (ii) in which the Commonwealth has a controlling interest.

***conduct*** includes being (whether directly or indirectly) a party to, or concerned in, the conduct.

***constitutional corporation*** means:

- (a) a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; or
- (b) a body corporate that is, for the purposes of paragraph 51(xx) of the Constitution, a financial corporation formed within the limits of the Commonwealth; or
- (c) a body corporate that is, for the purposes of paragraph 51(xx) of the Constitution, a trading corporation formed within the limits of the Commonwealth; or
- (d) a body corporate that is incorporated in a Territory; or
- (e) a Commonwealth authority.

***declaration envelope*** means an envelope in the form prescribed by the regulations on which a voter is required to make a declaration containing the prescribed information.

***demarcation dispute*** includes:

- (a) a dispute arising between 2 or more organisations, or within an organisation, as to the rights, status or functions of

members of the organisations or organisation in relation to the employment of those members; or

- (b) a dispute arising between employers and employees, or between members of different organisations, as to the demarcation of functions of employees or classes of employees; or
- (c) a dispute about the representation under this Schedule or the Workplace Relations Act of the industrial interests of employees by an organisation of employees.

***Deputy Industrial Registrar*** means a Deputy Industrial Registrar appointed under section 75 of the Workplace Relations Act.

***direct voting system***, in relation to an election for an office in an organisation, means a method of election at which:

- (a) all financial members; or
- (b) all financial members included in the branch, section, class or other division of the members of the organisation that is appropriate having regard to the nature of the office;

are, subject to reasonable provisions in relation to enrolment, eligible to vote.

***Electoral Commissioner*** has the same meaning as in the *Commonwealth Electoral Act 1918*.

***electoral official*** means an Australian Electoral Officer or a member of the staff of the AEC.

***eligibility rules***, in relation to an organisation or association, means the rules of the organisation or association that relate to the conditions of eligibility for membership or the description of the industry or enterprise (if any) in connection with which the organisation is, or the association is proposed to be, registered.

***employee*** includes any person whose usual occupation is that of employee, but does not include a person who is undertaking a vocational placement within the meaning of section 4 of the Workplace Relations Act.

***employer*** includes:

- (a) a person who is usually an employer; and
- (b) an unincorporated club.

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**employing authority**, in relation to a class of employees, means the person or body, or each of the persons or bodies, prescribed as the employing authority in relation to the class of employees.

**Employment Advocate** means the Employment Advocate referred to in Part IVA of the Workplace Relations Act.

**enterprise** means:

- (a) a business that is carried on by a single employer; or
- (b) an operationally distinct part of such a business; or
- (c) 2 or more operationally distinct parts of the same business carried on by the same employer.

**enterprise association** means an association referred to in paragraph 18(1)(c).

**enterprise organisation** means an enterprise association that is registered as an organisation under this Schedule.

**excluded auditor**, in relation to a reporting unit, means:

- (a) an officer or employee of the reporting unit or the organisation of which the reporting unit is a part; or
- (b) a partner, employer or employee of an officer or employee of the reporting unit or the organisation of which the reporting unit is a part; or
- (c) a liquidator in respect of property of the reporting unit or the organisation of which the reporting unit is a part; or
- (d) a person who owes more than \$5,000 to the reporting unit or the organisation of which the reporting unit is a part.

For the purposes of this definition, **employee** has the same meaning as in Part 3 of Chapter 8.

**exempt public sector superannuation scheme** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

**Federal Court** means the Federal Court of Australia.

**financial records** includes the following to the extent that they relate to finances or financial administration:

- (a) a register;
- (b) any other record of information;
- (c) financial reports or financial records, however compiled, recorded or stored;

(d) a document.

**financial year**, in relation to an organisation, means:

- (a) the period of 12 months commencing on 1 July in any year;  
or
- (b) if the rules of the organisation provide for another period of 12 months as the financial year of the organisation—the other period of 12 months.

Note: Section 240 provides for a different financial year in special circumstances.

**Full Bench** means a Full Bench of the Commission.

**general purpose financial report** means the report prepared in accordance with section 253.

**independent contractor** is confined to a natural person.

**industrial action** has the meaning given by section 7.

**industrial dispute** has the meaning given by section 8.

**Industrial Registrar** means the Industrial Registrar appointed under section 67 of the Workplace Relations Act.

**Industrial Registry** means the Australian Industrial Registry established under section 62 of the Workplace Relations Act.

**irregularity**, in relation to an election or ballot, includes:

- (a) a breach of the rules of an organisation or branch of an organisation; and
- (b) an act or omission by means of which:
  - (i) the full and free recording of votes by all persons entitled to record votes and by no other persons; or
  - (ii) a correct ascertainment or declaration of the results of the voting;is, or is attempted to be, prevented or hindered; and
- (c) a contravention of section 190.

**office** has the meaning given by section 9.

**officer**, in relation to an organisation, or a branch of an organisation, means a person who holds an office in the

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organisation or branch (including such a person when performing duties as a designated officer under Part 3 of Chapter 8).

**old IR agreement** means an agreement certified or approved under any of the following provisions of the Workplace Relations Act:

- (a) section 115, as in force immediately before the commencement of the Schedule to the *Industrial Relations Legislation Amendment Act 1992*; or
- (b) Division 3A of Part VI, as in force immediately before the commencement of Schedule 2 to the *Industrial Relations Reform Act 1993*; or
- (c) Part VIB, as in force immediately before the commencement of item 1 of Schedule 9 to the *Workplace Relations and Other Legislation Amendment Act 1996*.

**one-tier collegiate electoral system** means a collegiate electoral system comprising only one stage after the first stage.

**operating report** means the report prepared under section 254.

**organisation** means an organisation registered under this Schedule.

Note: Organisations registered under the Workplace Relations Act immediately before this Schedule commenced are taken to be registered under this Schedule (see the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*).

**postal ballot** means a ballot for the purposes of which:

- (a) a ballot paper, a declaration envelope, and another envelope in the form prescribed by the regulations, are sent by prepaid post to each person entitled to vote; and
- (b) facilities are provided for the return of the completed ballot paper by post by the voter without expense to the voter.

**prescribed** includes prescribed by Rules of the Commission made under section 48 of the Workplace Relations Act.

**President** means the President of the Commission.

**Presidential Member** means the President, a Vice President, a Senior Deputy President or a Deputy President, of the Commission.

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**public sector employment** has the same meaning as in the Workplace Relations Act.

**Registrar** means the Industrial Registrar or a Deputy Industrial Registrar.

**registry** means the Principal Registry or another registry established under section 64 of the Workplace Relations Act.

**Registry official** means:

- (a) a Registrar; or
- (b) a member of the staff of the Industrial Registry.

**reporting guidelines** mean the guidelines issued under section 255.

**reporting unit** has the meaning given by section 242.

**State industrial authority** means:

- (a) a board or court of conciliation or arbitration, or tribunal, body or persons, having authority under a State Act to exercise any power of conciliation or arbitration in relation to industrial disputes within the limits of the State; or
- (b) a special board constituted under a State Act relating to factories; or
- (c) any other State board, court, tribunal, body or official prescribed for the purposes of this definition.

**superannuation entity** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

**this Schedule** includes regulations made under this Schedule.

**Workplace Relations Act** means the *Workplace Relations Act 1996* and regulations made under section 359 of that Act but does not include this Schedule or regulations made under section 359 of this Schedule.

## 6A References to provisions in this Schedule

In this Schedule, a reference to a provision is a reference to a provision of this Schedule, unless the contrary intention appears.

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**7 Meaning of *industrial action***

- (1) In this Schedule, *industrial action* means:
- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the work, where:
    - (i) the terms and conditions of the work are prescribed, wholly or partly, by an award or an order of the Commission, by a certified agreement, old IR agreement or AWA, by an award, determination or order made by another tribunal under a law of the Commonwealth or otherwise by or under a law of the Commonwealth; or
    - (ii) the work is performed, or the practice is adopted, in connection with an industrial dispute; or
  - (b) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, in accordance with the terms and conditions prescribed by an award or an order of the Commission, by a certified agreement, or old IR agreement or AWA, by an award, determination or order made by another tribunal under a law of the Commonwealth or otherwise by or under a law of the Commonwealth; or
  - (c) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, that is adopted in connection with an industrial dispute; or
  - (d) a failure or refusal by persons to attend for work or a failure or refusal to perform any work at all by persons who attend for work, if:
    - (i) the persons are members of an organisation and the failure or refusal is in accordance with a decision made, or direction given, by an organisation, the committee of management of the organisation, or an officer or a group of members of the organisation acting in that capacity; or
    - (ii) the failure or refusal is in connection with an industrial dispute; or
    - (iii) the persons are employed by the Commonwealth or a constitutional corporation; or
    - (iv) the persons are employed in a Territory;



but does not include:

- (e) action by employees that is authorised or agreed to by the employer of the employees; or
  - (f) action by an employer that is authorised or agreed to by or on behalf of employees of the employer; or
  - (g) action by an employee if:
    - (i) the action was based on a reasonable concern by the employee about an imminent risk to his or her health or safety; and
    - (ii) the employee did not unreasonably fail to comply with a direction of his or her employer to perform other available work, whether at the same or another workplace, that was safe and appropriate for the employee to perform.
- (2) For the purposes of this Schedule:
- (a) conduct is capable of constituting ***industrial action*** even if the conduct relates to part only of the duties that persons are required to perform in the course of their employment; and
  - (b) ***industrial action*** includes a course of conduct consisting of a series of industrial actions.

## **8 Meaning of *industrial dispute***

- (1) In this Schedule, ***industrial dispute*** means:
- (a) an industrial dispute (including a threatened, impending or probable industrial dispute):
    - (i) extending beyond the limits of any one State; and
    - (ii) that is about matters pertaining to the relationship between employers and employees; or
  - (b) a situation that is likely to give rise to an industrial dispute of the kind referred to in paragraph (a);
- and includes:
- (c) a demarcation dispute (whether or not, in the case of a demarcation dispute involving an organisation or the members of an organisation in that capacity, the dispute extends beyond the limits of any one State); and
  - (d) a part of an industrial dispute; and
  - (e) an industrial dispute so far as it relates to a matter in dispute; and

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- (f) a question arising in relation to an industrial dispute.

*Additional operation of Schedule—extension to industrial issues*

- (2) Without affecting its operation apart from this section, this Schedule also has effect as if a reference to an ***industrial dispute*** included a reference to an industrial issue.
- (3) In this section, ***industrial issue*** has the meaning that it is given by section 5 of the Workplace Relations Act for the purposes of that section.

*Additional operation of Schedule—extension to Victorian disputes*

- (4) Subsection (5) has effect only for so long, and in so far, as the **Commonwealth Powers (Industrial Relations) Act 1996** of Victoria refers to the Parliament of the Commonwealth a matter or matters that result in the Parliament of the Commonwealth having sufficient legislative power for that subsection to have effect.
- (5) Without affecting its operation apart from this section, this Schedule also has effect as if the definition of ***industrial dispute*** in subsection (1) were replaced by the following:

***industrial dispute*** means:

- (a) an industrial dispute (including a threatened, impending or probable industrial dispute):
- (i) within the limits of Victoria; and
  - (ii) that is about matters pertaining to the relationship between employers and employees; or
- (b) a situation that is likely to give rise to an industrial dispute of the kind referred to in paragraph (a);
- and includes a demarcation dispute.

## 9 Meaning of *office*

- (1) In this Schedule, ***office***, in relation to an organisation or a branch of an organisation means:
- (a) an office of president, vice president, secretary or assistant secretary of the organisation or branch; or

- (b) the office of a voting member of a collective body of the organisation or branch, being a collective body that has power in relation to any of the following functions:
    - (i) the management of the affairs of the organisation or branch;
    - (ii) the determination of policy for the organisation or branch;
    - (iii) the making, alteration or rescission of rules of the organisation or branch;
    - (iv) the enforcement of rules of the organisation or branch, or the performance of functions in relation to the enforcement of such rules; or
  - (c) an office the holder of which is, under the rules of the organisation or branch, entitled to participate directly in any of the functions referred to in subparagraphs (b)(i) and (iv), other than an office the holder of which participates only in accordance with directions given by a collective body or another person for the purpose of implementing:
    - (i) existing policy of the organisation or branch; or
    - (ii) decisions concerning the organisation or branch; or
  - (d) an office the holder of which is, under the rules of the organisation or branch, entitled to participate directly in any of the functions referred to in subparagraphs (b)(ii) and (iii); or
  - (e) the office of a person holding (whether as trustee or otherwise) property:
    - (i) of the organisation or branch; or
    - (ii) in which the organisation or branch has a beneficial interest.
- (2) In this Schedule, a reference to an *office* in an association or organisation includes a reference to an office in a branch of the association or organisation.

## 10 Forging and uttering

### *Forging*

- (1) For the purposes of this Schedule, a person is taken to have *forged* a document if the person:

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- (a) makes a document which is false, knowing it to be false; or
- (b) without authority, alters a genuine document in a material particular;

with intent that:

- (c) the false or altered document may be used, acted on, or accepted, as genuine, to the prejudice of another person; or
  - (d) another person may, in the belief that it is genuine, be induced to do or refrain from doing an act.
- (2) For the purposes of this Schedule, if a person:
- (a) makes a document which is false, knowing it to be false; or
  - (b) without authority, alters a genuine document in a material particular;
- with intent that a computer, a machine or other device should respond to the false or altered document as if it were genuine:
- (c) to the prejudice of another person; or
  - (d) with the result that another person would be induced to do or refrain from doing an act;
- the first-mentioned person is taken to have *forged* the document.

### *Uttering*

- (3) For the purposes of this Schedule, a person is taken to **utter** a forged document if the person:
- (a) uses or deals with it; or
  - (b) attempts to use or deal with it; or
  - (c) attempts to induce another person to use, deal with, act upon, or accept it.

## **11 Actions and opinions of AEC**

- (1) In this Schedule, a reference to a ballot or election being conducted, or a step in a ballot or election being taken, by the **AEC** is a reference to the ballot or election being conducted, or the step being taken, by:
- (a) an electoral official; or
  - (b) a person authorised on behalf of the AEC to do so.
- (2) In this Schedule, a reference to the opinion or other state of mind of the **AEC**, in relation to the exercise of a function, is a reference

to the opinion or other state of mind of a person authorised to carry out the function on behalf of the AEC.

## **12 Membership of organisations**

In this Schedule, unless the contrary intention appears, a reference to:

- (a) a person who is eligible to become a member of an organisation; or
- (b) a person who is eligible for membership of an organisation; includes a reference to a person who is eligible merely because of an agreement made under rules of the organisation made under subsection 151(1).

## **13 Functions of the Industrial Registry**

- (1) The functions of the Industrial Registry include:
  - (a) keeping a register of organisations; and
  - (b) providing advice and assistance to organisations in relation to their rights and obligations under this Schedule.

Note: Other functions of the Industrial Registry are set out in section 63 of the Workplace Relations Act.

- (2) Subject to this Schedule, the register of organisations is to be kept in whatever form the Industrial Registrar considers appropriate.

## **14 President may establish Organisations Panel**

- (1) The President may establish a panel (the ***Organisations Panel***) of members of the Commission to exercise the powers of the Commission under this Schedule.
- (2) The Organisations Panel is to consist of:
  - (a) a Presidential Member whose duties include organising and allocating the work of the Panel; and
  - (b) one or more other members of the Commission assigned to the Panel by the President.
- (3) A member of the Organisations Panel may be a member of one or more panels referred to in section 37 of the Workplace Relations Act.

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Note: Section 37 of the Workplace Relations Act provides for the setting up of Commission panels for particular industries.

- (4) The fact that a person is a member of the Organisations Panel does not affect any powers, function or duties that have been, or may be, given to the person by or under any other provision of this Schedule or the Workplace Relations Act.
- (5) Even if the President establishes an Organisations Panel, he or she may direct that the powers of the Commission in relation to a particular matter arising under this Schedule are to be exercised by:
  - (a) a member of the Commission who is not a member of the Panel; or
  - (b) members of the Commission, some or all of whom are not members of the Panel.

## 15 Disapplication of Part 2.5 of *Criminal Code*

Part 2.5 of the *Criminal Code* does not apply to offences against this Schedule.

Note 1: Section 6 of this Schedule defines *this Schedule* to include the regulations.

Note 2: For the purposes of this Schedule (and the regulations), corporate responsibility is dealt with by section 344, rather than by Part 2.5 of the *Criminal Code*.

## 16 Operation of offence provisions

If a maximum penalty is specified:

- (a) at the foot of a section of this Schedule (other than a section that is divided into subsections); or
  - (b) at the foot of a subsection of this Schedule;
- then:
- (c) a person who contravenes the section or subsection is guilty of an offence punishable, on conviction, by a penalty not exceeding the specified penalty; or
  - (d) the offence referred to in the section or subsection is punishable, on conviction, by a penalty not exceeding the specified penalty.

## **Chapter 2—Registration and cancellation of registration**

### **Part 1—Simplified outline of Chapter**

#### **17 Simplified outline**

This Chapter deals with the types of employer and employee associations that can be registered and the conditions for their registration (see Part 2). Part 2 also prohibits certain kinds of discriminatory conduct by employers and organisations in relation to the formation and registration of employee associations.

This Chapter also provides that an organisation's registration can be cancelled by the Federal Court or by the Commission. It sets out the grounds and procedures for cancellation, and the consequences of cancellation (see Part 3).

## Part 2—Registration

### Division 1—Types of associations that may apply for registration

#### 18 Employer and employee associations may apply

- (1) Any of the following associations may apply for registration as an organisation:
- (a) an association of which some or all of the members are employers who are capable of being engaged in an industrial dispute and the other members (if any) are:
    - (i) officers of the association; or
    - (ii) persons (other than employees) who carry on business; or
    - (iii) persons who, when admitted to membership, were employers and who have not resigned and whose membership has not been terminated;
  - (b) an association of which some or all of the members are employees who are capable of being engaged in an industrial dispute and the other members (if any) are:
    - (i) officers of the association; or
    - (ii) persons specified in subsection (3); or
    - (iii) independent contractors who, if they were employees performing work of the kind which they usually perform as independent contractors, would be employees eligible for membership of the association;
  - (c) an association (an *enterprise association*) of which some or all of the members are employees performing work in the same enterprise and the other members (if any) are:
    - (i) officers of the association; or
    - (ii) persons specified in subsection (3); or
    - (iii) independent contractors who, if they were employees performing work of the kind which they usually perform as independent contractors, would be employees eligible for membership of the association.



- (2) Subsection (1) does not apply in relation to an association that has members referred to in subparagraph (1)(a)(ii) or (iii), (b)(ii) or (iii) or (c)(ii) or (iii) unless the association is effectively representative of the members who are employers or employees, as the case may be.
- (3) The persons specified for the purpose of subparagraphs (1)(b)(ii) and (c)(ii) are persons (other than employees) who:
  - (a) are, or are able to become, members of an industrial organisation of employees within the meaning of the *Industrial Relations Act 1996* of New South Wales; or
  - (b) are employees for the purposes of the *Industrial Relations Act 1999* of Queensland; or
  - (c) are employees for the purposes of the *Industrial Relations Act 1979* of Western Australia; or
  - (d) are employees for the purposes of the *Industrial and Employee Relations Act 1994* of South Australia.

## **Division 2—Registration criteria**

### **19 Criteria for registration of associations other than enterprise associations**

- (1) The Commission must grant an application for registration made by an association (other than an enterprise association) that, under section 18, may apply for registration as an organisation if, and only if:
  - (a) the association:
    - (i) is a genuine association of a kind referred to in section 18; and
    - (ii) is an association for furthering or protecting the interests of its members; and
  - (b) in the case of an association of employees—the association is free from control by, or improper influence from, an employer or by an association or organisation of employers; and
  - (c) in the case of an association of employers—the members who are employers have, in the aggregate, throughout the 6 months before the application, employed on an average taken per month at least 50 employees; and
  - (d) in the case of an association of employees—the association has at least 50 members who are employees; and
  - (e) the Commission is satisfied that the association would conduct its affairs in a way that meets the obligations of an organisation under this Schedule and the Workplace Relations Act; and
  - (f) the rules of the association make provision as required by this Schedule to be made by the rules of organisations; and
  - (g) the association does not have the same name as that of an organisation or a name that is so similar to the name of an organisation as to be likely to cause confusion; and
  - (h) a majority of the members present at a general meeting of the association, or an absolute majority of the committee of management of the association, have passed, under the rules of the association, a resolution in favour of registration of the association as an organisation; and

- (i) the registration of the association would further the objects set out in section 5 of this Schedule and section 3 of the Workplace Relations Act; and
  - (j) subject to subsection (2), there is no organisation to which members of the association might belong or, if there is such an organisation, it is not an organisation:
    - (i) to which the members of the association could more conveniently belong; and
    - (ii) that would more effectively represent those members.
- (2) If:
- (a) there is an organisation to which the members of the association might belong; and
  - (b) the members of the association could more conveniently belong to the organisation; and
  - (c) the organisation would more effectively represent those members than the association would;
- the requirements of paragraph (1)(j) are taken to have been met if the Commission accepts an undertaking from the association that the Commission considers appropriate to avoid demarcation disputes that might otherwise arise from an overlap between the eligibility rules of the organisation and the eligibility rules of the association.
- (3) Without limiting the matters that the Commission may take into account in considering, under subparagraph (1)(j)(ii), the effectiveness of the representation of an organisation or association, the Commission must take into account whether the representation would be consistent with the objects set out in section 5 of this Schedule and section 3 of the Workplace Relations Act.
- (4) In applying paragraph (1)(e), the Commission must have regard to whether any recent conduct by the association or its members would have provided grounds for an application under section 28 had the association been registered when the conduct occurred.

## **20 Criteria for registration of enterprise associations**

- (1) The Commission must grant an application for registration made by an enterprise association that, under section 18, may apply for registration as an organisation if, and only if:

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- (a) the association:
    - (i) is a genuine association of a kind referred to in section 18; and
    - (ii) is an association for furthering or protecting the interests of its members; and
  - (b) the association is free from control by, or improper influence from:
    - (i) any employer, whether at the enterprise in question or otherwise; or
    - (ii) any person or body with an interest in that enterprise; or
    - (iii) any organisation, or any other association of employers or employees; and
  - (c) the association has at least 50 members who are employees; and
  - (d) the Commission is satisfied that the association would conduct its affairs in a way that meets the obligations of an organisation under this Schedule and the Workplace Relations Act; and
  - (e) the rules of the association make provision as required by this Schedule to be made by the rules of organisations; and
  - (f) the association does not have the same name as that of an organisation or a name that is so similar to the name of an organisation as to be likely to cause confusion; and
  - (g) the Commission is satisfied that a majority of the persons eligible to be members of the association support its registration as an organisation; and
  - (h) a majority of the members present at a general meeting of the association, or an absolute majority of the committee of management of the association, have passed, under the rules of the association, a resolution in favour of registration of the association as an organisation; and
  - (i) the registration of the association would further the objects set out in section 5 of this Schedule and section 3 of the Workplace Relations Act.
- (1A) For the purposes of paragraph (1)(b), if a person or body has an interest in the enterprise in question, the Commission may decide that, despite the interest, the association is free from control by, or improper influence from, the person or body.

Note: The Commission could conclude that the association was free from control etc. by the person if, for example, the nature of the person's interest was not such as to give the person a major say in the conduct of the enterprise or if the person did not have a significant management role in the association.

- (1B) For the purposes of paragraph (1)(b), if an employer meets or will meet costs and expenses of the association, or provides or will provide services to the association, this assistance must be taken into account when considering whether the association is free from control by, or improper influence from the employer.
- (2) In applying paragraph (1)(d), the Commission must have regard to whether any recent conduct by the association or its members would have provided grounds for an application under section 28 had the association been registered when the conduct occurred.

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**Division 3—Prohibited conduct in relation to formation or registration of employee associations**

**21 Prohibited conduct—employers**

- (1) An employer must not, for a prohibited reason, or for reasons that include a prohibited reason, do or threaten to do any of the following:
  - (a) dismiss an employee;
  - (b) injure an employee in his or her employment;
  - (c) alter the position of an employee to the employee's prejudice;
  - (d) discriminate against an employee.
- (2) A person must not, for a prohibited reason, or for reasons that include a prohibited reason, do or threaten to do any of the following:
  - (a) terminate a contract for services that he or she has entered into with an independent contractor;
  - (b) injure an independent contractor in relation to the terms and conditions of the contract for services;
  - (c) alter the position of an independent contractor to the independent contractor's prejudice;
  - (d) discriminate against an independent contractor.
- (3) Conduct referred to in subsection (1) or (2) is for a ***prohibited reason*** if it is carried out because the employee or independent contractor has done, or has omitted to do, any act:
  - (a) under this Schedule that relates to the formation or registration of an association referred to in paragraph 18(1)(b) or (c); or
  - (b) in connection with, or in preparation for, such an act or omission.
- (4) The following are examples of acts or omissions to which subsection (3) applies:
  - (a) making an application for registration of an employee association under paragraph 18(1)(b) or (c);

- (b) supporting the registration of an employee association (for example, by supporting, or supporting the making of, an application for its registration);
- (c) participating, or encouraging a person to participate, in proceedings before the Commission in relation to such an application;
- (d) not participating, or encouraging a person not to participate, in such proceedings;
- (e) becoming a member, or encouraging a person to become a member, of an employee association.

## **22 Prohibited conduct—organisations**

- (1) An organisation, or an officer or member of an organisation, must not take, or threaten to take, industrial action whose aim, or one of whose aims, is to coerce a person to breach section 21.
- (2) An organisation, or an officer or member of an organisation, must not, for a prohibited reason, or for reasons that include a prohibited reason, take or threaten to take, any action whose aim, or one of whose aims, is to prejudice a person in the person's employment, or an independent contractor in the contractor's engagement.
- (3) Conduct referred to in subsection (2) is for a *prohibited reason* if it is carried out because the person has done, or has omitted to do, any act:
  - (a) under this Schedule that relates to the formation or registration of an association referred to in paragraph 18(1)(b) or (c); or
  - (b) in connection with, or in preparation for, such an act or omission.
- (4) The examples set out in subsection 21(4) are examples of acts or omissions to which subsection (3) of this section applies.
- (5) An organisation, or an officer or member of an organisation, must not impose, or threaten to impose, a penalty, forfeiture or disability of any kind on a member of the organisation because the member concerned does or proposes to do, for a prohibited reason, an act or omission referred to in subsection 21(3).

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**23 Powers of Federal Court in relation to prohibited conduct**

- (1) The Federal Court may, if the Court considers it appropriate in all the circumstances, make one or more of the following orders in respect of conduct that contravenes section 21 or 22:
  - (a) an order imposing on a person whose conduct contravenes that section a penalty of not more than:
    - (i) in the case of a body corporate—100 penalty units; or
    - (ii) in any other case—20 penalty units;
  - (b) an order requiring the person not to carry out a threat made by the person, or not to make any further threat;
  - (c) injunctions (including interim injunctions), and any other orders, that the Court considers necessary to stop the conduct or remedy its effects;
  - (d) any other consequential orders.
- (2) An application for an order under subsection (1) may be made by:
  - (a) a person against whom the conduct is being, has been, or is threatened to be, taken; or
  - (b) any other person prescribed by the regulations.

**24 Certain actions considered to be done by organisation or employer**

- (1) For the purposes of this Division:
  - (a) action done by one of the following bodies or persons is taken to have been done by an organisation:
    - (i) the committee of management of the organisation;
    - (ii) an officer or agent of the organisation acting in that capacity;
    - (iii) a member or group of members of the organisation acting under the rules of the organisation;
    - (iv) a member of the organisation, who performs the function of dealing with an employer on behalf of other members of the organisation, acting in that capacity; and
  - (b) action done by an agent of an employer acting in that capacity is taken to have been done by the employer.
- (2) Subparagraphs (1)(a)(iii) and (iv) and paragraph (1)(b) do not apply if:



- (a) in relation to subparagraphs (1)(a)(iii) and (iv):
    - (i) a committee of management of the organisation; or
    - (ii) a person authorised by the committee; or
    - (iii) an officer of the organisation;has taken reasonable steps to prevent the action; or
  - (b) in relation to paragraph (1)(b), the employer has taken reasonable steps to prevent the action.
- (3) In this section:
- officer***, in relation to an organisation, includes:
- (a) a delegate or other representative of the organisation; and
  - (b) an employee of the organisation.

## **Division 4—Registration process**

### **25 Applicant for registration may change its name or alter its rules**

- (1) The Commission may, on the application of an association applying to be registered as an organisation, grant leave to the association, on such terms and conditions as the Commission considers appropriate, to change its name or to alter its rules:
  - (a) to enable it to comply with this Schedule; or
  - (b) to remove a ground of objection taken by an objector under the regulations or by the Commission; or
  - (c) to correct a formal error in its rules (for example, to remove an ambiguity, to correct spelling or grammar, or to correct an incorrect reference to an organisation or person).

Note: Paragraph (a)—in order for an organisation to comply with this Schedule, its rules must not be contrary to the Workplace Relations Act (see paragraph 142(a) of this Schedule).

- (2) An association granted leave under subsection (1) may change its name, or alter its rules, even though the application for registration is pending.
- (3) Rules of an association as altered in accordance with leave granted under subsection (1) are binding on the members of the association:
  - (a) in spite of anything in the other rules of the association; and
  - (b) subject to any further alterations lawfully made.

### **26 Registration**

- (1) When the Commission grants an application by an association for registration as an organisation, the Industrial Registrar must immediately enter, in the register kept under paragraph 13(1)(a), such particulars in relation to the association as are prescribed and the date of the entry.
- (2) An association is to be taken to be registered under this Schedule when the Industrial Registrar enters the prescribed particulars in the register under subsection (1).
- (3) On registration, an association becomes an organisation.

- (4) The Industrial Registrar must issue to each organisation registered under this Schedule a certificate of registration in the prescribed form.

Note: Certificates of registration issued under the Workplace Relations Act continue in force (see the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*).

- (5) The certificate is, until proof of cancellation, conclusive evidence of the registration of the organisation specified in the certificate.
- (6) The Industrial Registrar may, as prescribed, issue to an organisation a copy of, or a certificate replacing, the certificate of registration issued under subsection (4) or that certificate as amended under section 160.

## **27 Incorporation**

An organisation:

- (a) is a body corporate; and
- (b) has perpetual succession; and
- (c) has power to purchase, take on lease, hold, sell, lease, mortgage, exchange and otherwise own, possess and deal with, any real or personal property; and
- (d) must have a common seal; and
- (e) may sue or be sued in its registered name.

## **Part 3—Cancellation of registration**

### **28 Application for cancellation of registration**

- (1) An organisation or person interested, or the Minister, may apply to the Federal Court for an order cancelling the registration of an organisation on the ground that:
  - (a) the conduct of:
    - (i) the organisation (in relation to its continued breach of an award, an order of the Commission, a certified agreement or an old IR agreement or its continued failure to ensure that its members comply with and observe an award, an order of the Commission, a certified agreement or an old IR agreement or in any other respect); or
    - (ii) a substantial number of the members of the organisation (in relation to their continued breach of an award, an order of the Commission, a certified agreement or an old IR agreement or in any other respect);has prevented or hindered the achievement of an object of this Schedule or the Workplace Relations Act; or
  - (b) the organisation, or a substantial number of the members of the organisation or of a section or class of members of the organisation, has engaged in industrial action that has prevented, hindered or interfered with:
    - (i) trade or commerce between Australia and a place outside Australia; or
    - (ii) trade or commerce between the States; or
    - (iii) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
    - (iv) the provision of any public service by the Commonwealth or a State or Territory or an authority of the Commonwealth or a State or Territory; or
  - (c) the organisation, or a substantial number of the members of the organisation or of a section or class of members of the organisation, has or have been, or is or are, engaged in industrial action that has had, is having or is likely to have a

substantial adverse effect on the safety, health or welfare of the community or a part of the community; or

- (d) the organisation, or a substantial number of the members of the organisation or of a section or class of members of the organisation, has or have failed to comply with an injunction granted under subsection 127(6) or (7) of the Workplace Relations Act; or
- (e) the organisation, or a substantial number of the members of the organisation or of a section or class of members of the organisation, has or have failed to comply with an injunction granted under section 187AD of the Workplace Relations Act.

- (2) An organisation in relation to which an application is made under subsection (1) must be given an opportunity of being heard by the Court.

- (3) If the Court:

- (a) finds that a ground for cancellation set out in the application has been established; and
  - (b) does not consider that it would be unjust to do so having regard to the degree of gravity of the matters constituting the ground and the action (if any) that has been taken by or against the organisation in relation to the matters;

the Court must, subject to subsection (4) and section 29, cancel the registration of the organisation.

- (4) If:

- (a) the Court finds that a ground for cancellation set out in the application has been established; and
  - (b) that finding is made, wholly or mainly, because of the conduct of a particular section or class of members of the organisation;

the Court may, if it considers it just to do so, instead of cancelling the registration of the organisation under subsection (3), by order:

- (c) determine alterations of the eligibility rules of the organisation so as to exclude from eligibility for membership of the organisation persons belonging to the section or class; or
  - (d) where persons belonging to the section or class are eligible for membership under an agreement of the kind referred to in

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section 151—declare that the persons are excluded from eligibility for membership in spite of anything in the agreement.

- (5) If the Court cancels the registration of an organisation, the Court may direct that an application by the former organisation to be registered as an organisation is not to be dealt with under this Schedule before the end of a specified period.
- (6) An alteration of rules determined by order under subsection (4) takes effect on the date of the order or on such other day as is specified in the order.
- (7) A finding of fact by the Court in proceedings under section 127 or Part VIIIA of the Workplace Relations Act is admissible as prima facie evidence of that fact in an application made on a ground specified in paragraph (1)(d) or (e), as the case requires.

**29 Orders where cancellation of registration deferred**

- (1) If the Federal Court finds that a ground of an application under subsection 28(1) has been established, the Court may, if it considers it just to do so, instead of cancelling the registration of the organisation concerned under subsection 28(3) or making an order under subsection 28(4), exercise one or more of the powers set out in subsection (2) of this section.
- (2) The powers that may be exercised by the Court, by order, under subsection (1) are as follows:
  - (a) the power to suspend, to the extent specified in the order, any of the rights, privileges or capacities of the organisation or of all or any of its members, as such members, under this Schedule, the Workplace Relations Act or any other Act, under awards or orders made under this Schedule, the Workplace Relations Act or any other Act or under certified agreements or old IR agreements;
  - (b) the power to give directions as to the exercise of any rights, privileges or capacities that have been suspended;
  - (c) the power to make provision restricting the use of the funds or property of the organisation or a branch of the organisation, and for the control of the funds or property for the purpose of ensuring observance of the restrictions.

- (3) If the Court exercises a power set out in subsection (2), it must defer the determination of the question whether to cancel the registration of the organisation concerned until:
  - (a) the orders made in the exercise of the power cease to be in force; or
  - (b) on application by a party to the proceeding, the Court considers that it is just to determine the question, having regard to any evidence given relating to the observance or non-observance of any order and to any other relevant circumstance;whichever is earlier.
- (4) An order made in the exercise of a power set out in subsection (2) has effect in spite of anything in the rules of the organisation concerned or a branch of the organisation.
- (5) An order made in the exercise of a power set out in subsection (2):
  - (a) may be revoked by the Court, by order, on application by a party to the proceeding concerned; and
  - (b) unless sooner revoked, ceases to be in force:
    - (i) 6 months after it came into force; or
    - (ii) such longer period after it came into force as is ordered by the Court on application by a party to the proceeding made while the order remains in force.

### **30 Cancellation of registration on technical grounds etc.**

- (1) The Commission may cancel the registration of an organisation:
  - (a) on application by the organisation made under the regulations; or
  - (b) on application by an organisation or person interested or by the Minister, if the Commission has satisfied itself, as prescribed, that the organisation:
    - (i) was registered by mistake; or
    - (ii) is no longer effectively representative of the members who are employers or employees, as the case requires; or
    - (iii) is not free from control by, or improper influence from, a person or body referred to in paragraph 19(1)(b) or 20(1)(b), as the case requires; or

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- (iv) subject to subsection (6), if the organisation is an enterprise association—the enterprise to which it relates has ceased to exist; or
- (c) on the Commission’s own motion, if:
  - (i) the Commission has satisfied itself, as prescribed, that the organisation is defunct; or
  - (ii) the organisation is an organisation of employees and has fewer than 50 members who are employees.
- (2) Before the Commission cancels the registration of an organisation under:
  - (a) paragraph (1)(b) on application by a person interested or by the Minister; or
  - (b) paragraph (1)(c);the Commission must give the organisation an opportunity to be heard.
- (3) The Commission may also cancel the registration of an organisation if:
  - (a) the Commission is satisfied that the organisation has breached an undertaking referred to in subsection 19(2); and
  - (b) the Commission does not consider it appropriate to amend the eligibility rules of the organisation under section 157.
- (4) A cancellation under subsection (3) may be made:
  - (a) on application by an organisation or person interested; or
  - (b) on application by the Minister; or
  - (c) on the Commission’s own motion.
- (5) For the purposes of subparagraph (1)(b)(iv), the enterprise to which an organisation relates has ceased to exist if:
  - (a) in the case of an organisation that relates only to an operationally distinct part or parts of the business that constitutes the enterprise—that part or those parts have ceased to exist, or the whole of the business has ceased to exist; or
  - (b) in the case of an organisation that relates to the whole of the business that constitutes the enterprise—the whole of the business has ceased to exist.



(6) Subparagraph (1)(b)(iv) does not apply if:

- (a) some or all of the business of the enterprise in question is now conducted by another enterprise; and
- (b) all the alterations that are necessary to enable the organisation to operate as an enterprise association in relation to the other enterprise have been made; and
- (c) the Commission is satisfied that the organisation still meets the requirements of subsection 20(1).

The Commission must give the organisation a reasonable opportunity to alter its rules as provided in paragraph (b) before the Commission considers cancelling the registration of the organisation on the ground referred to in subparagraph (1)(b)(iv).

### **31 Cancellation to be recorded**

If the registration of an organisation under this Schedule is cancelled, the Industrial Registrar must enter the cancellation, and the date of cancellation, in the register kept under paragraph 13(1)(a).

### **32 Consequences of cancellation of registration**

The cancellation of the registration of an organisation under this Schedule has the following consequences:

- (a) the organisation ceases to be an organisation and a body corporate under this Schedule, but does not because of the cancellation cease to be an association;
- (b) the cancellation does not relieve the association or any of its members from any penalty or liability incurred by the organisation or its members before the cancellation;
- (c) from the cancellation, the association and its members are not entitled to the benefits of any award, order of the Commission, certified agreement or old IR agreement that bound the organisation or its members;
- (d) the Commission may, on application by an organisation or person interested, make such order as the Commission considers appropriate about the other effects (if any) of such an award, order or agreement on the association and its members;
- (e) 21 days after the cancellation, such an award, order or agreement ceases, subject to any order made under

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paragraph (d), in all other respects to have effect in relation to the association and its members;

- (f) the Federal Court may, on application by a person interested, make such order as it considers appropriate in relation to the satisfaction of the debts and obligations of the organisation out of the property of the organisation;
- (g) the property of the organisation is, subject to any order made under paragraph (f), the property of the association and must be held and applied for the purposes of the association under the rules of the organisation so far as they can still be carried out or observed.

## **Part 4—Commission's powers under this Chapter**

### **33 Powers exercisable by Presidential Member**

The powers of the Commission under this Chapter are exercisable only by a Presidential Member.

## **Chapter 3—Amalgamation and withdrawal from amalgamation**

### **Part 1—Simplified outline of Chapter**

#### **34 Simplified outline**

The procedure for the amalgamation of 2 or more organisations is set out in Part 2 of this Chapter.

The 2 main elements of the amalgamation procedure are an application to the Commission seeking approval for a ballot to be held on the question of amalgamation, and the holding of a ballot conducted by the Australian Electoral Commission.

Part 2 also sets out the consequences of an amalgamation (for example, in relation to assets and liabilities of the organisations forming the new amalgamated organisation). It also enables the validation of certain acts done for the purposes of an amalgamation.

The procedure that enables part of an amalgamated organisation to withdraw from it is set out in Part 3 of this Chapter.

The main elements of the procedure to withdraw are an application to the Federal Court for approval to hold a ballot on the question, and the holding of the ballot.

Part 3 also sets out the consequences of a withdrawal from amalgamation (for example, in relation to assets and liabilities of the amalgamated organisation and the constituent part). It also enables the validation of certain acts done for the purposes of a withdrawal from amalgamation.

## Part 2—Amalgamation of organisations

### Division 1—General

#### 35 Definitions

In this Part:

***alternative provision*** means a provision of the kind mentioned in subsection 41(1).

***amalgamated organisation***, in relation to a completed amalgamation, means the organisation of which members of the de-registered organisations have become members under paragraph 73(3)(d).

***amalgamation day***, in relation to a completed amalgamation, means the day fixed under subsection 73(2) in relation to the amalgamation.

***asset*** means property of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible) in real or personal property of any description; and
- (b) any chose in action; and
- (c) any right, interest or claim of any kind in, or in relation to, property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing).

***authorised person***, in relation to a completed amalgamation, means the secretary of the amalgamated organisation or a person authorised, in writing, by the committee of management of the amalgamated organisation.

***charge*** means a charge created in any way, and includes a mortgage and an agreement to give or execute a charge or mortgage (whether on demand or otherwise).

***closing day***, in relation to a ballot for a proposed amalgamation, means the day, from time to time, fixed under section 58 as the closing day of the ballot.

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***commencing day***, in relation to a ballot for a proposed amalgamation, means the day, from time to time, fixed under section 58 as the commencing day of the ballot.

***completed amalgamation*** means a proposed amalgamation that has taken effect.

***debenture*** has the same meaning as in section 9 of the *Corporations Act 2001*.

***defect*** includes a nullity, omission, error or irregularity.

***de-registered organisation***, in relation to a completed amalgamation, means an organisation that has been de-registered under this Part.

***de-registration***, in relation to an organisation, means the cancellation of its registration.

***holder***, in relation to a charge, includes a person in whose favour a charge is to be given or executed (whether on demand or otherwise) under an agreement.

***instrument*** means an instrument of any kind, and includes:

- (a) any contract, deed, undertaking or agreement; and
- (b) any mandate, instruction, notice, authority or order; and
- (c) any lease, licence, transfer, conveyance or other assurance; and
- (d) any guarantee, bond, power of attorney, bill of lading, negotiable instrument or order for the payment of money; and
- (e) any mortgage, charge, lien or security;

whether express or implied and whether made or given orally or in writing.

***instrument to which this Part applies***, in relation to a completed amalgamation, means an instrument:

- (a) to which a de-registered organisation is a party; or
- (b) that was given to, by, or in favour of, a de-registered organisation; or
- (c) in which a reference is made to a de-registered organisation; or

- (d) under which any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned, to or by a de-registered organisation.

***interest:***

- (a) in relation to a company—includes an interest in a managed investment scheme, within the meaning of the *Corporations Act 2001*, made available by the company; and
- (b) in relation to land—means:
  - (i) a legal or equitable estate or interest in the land; or
  - (ii) a right, power or privilege over, or in relation to, the land.

***invalidity*** includes a defect.

***irregularity*** includes a breach of the rules of an organisation, but in Division 7 does not include an irregularity in relation to a ballot.

***liability*** means a liability of any kind, and includes an obligation of any kind (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing).

***proceeding to which this Part applies***, in relation to a completed amalgamation, means a proceeding to which a de-registered organisation was a party immediately before the amalgamation day.

***proposed alternative amalgamation***, in relation to a proposed amalgamation, means an amalgamation proposed to be made under an alternative provision.

***proposed amalgamated organisation***, in relation to a proposed amalgamation, means the organisation or proposed organisation of which members of the proposed de-registering organisations are proposed to become members under this Part.

***proposed amalgamation*** means the proposed carrying out of arrangements in relation to 2 or more organisations under which:

- (a) an organisation is, or 2 or more organisations are, to be de-registered under this Part; and

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- (b) members of the organisation or organisations to be de-registered are to become members of another organisation (whether existing or proposed).

***proposed de-registering organisation***, in relation to a proposed amalgamation, means an organisation that is to be de-registered under this Part.

***proposed principal amalgamation***, in relation to a proposed amalgamation, means:

- (a) if the scheme for the amalgamation contains an alternative provision—the amalgamation proposed to be made under the scheme otherwise than under an alternative provision; or
- (b) in any other case—the proposed amalgamation.

**36 Procedure to be followed for proposed amalgamation etc.**

- (1) For the purpose of implementing the scheme for a proposed amalgamation, the procedure provided by this Part is to be followed.
- (2) Where it appears to the Commission that the performance of an act, including:
  - (a) the de-registration of an organisation; and
  - (b) the registration of an organisation; and
  - (c) the giving of consent to:
    - (i) a change in the name of an organisation; or
    - (ii) an alteration of the eligibility rules of an organisation;is sought for the purposes of a proposed amalgamation, the Commission may perform the act only in accordance with this Part.
- (3) If any difficulty arises, or appears likely to arise, in the application of this Schedule for the purpose of implementing the scheme for a proposed amalgamation, the Commission may give directions and make orders to resolve the difficulty.
- (4) Directions and orders under subsection (3):
  - (a) have effect subject to any order of the Federal Court; and
  - (b) have effect despite anything in:
    - (i) the regulations or the Rules of the Commission; or
    - (ii) the rules of an organisation or any association proposed to be registered as an organisation.



### **37 Exercise of Commission's powers under this Part**

The powers of the Commission under this Part are exercisable only by a Presidential Member.

## **Division 2—Preliminary matters**

### **38 Federations**

#### *Application for recognition as federation*

- (1) The existing organisations concerned in a proposed amalgamation may jointly lodge in the Industrial Registry an application for recognition as a federation.
- (2) The application must:
  - (a) be lodged before an application is lodged under section 44 in relation to the amalgamation; and
  - (b) include such particulars as are prescribed.

#### *Grant of application*

- (3) If the Commission is satisfied that the organisations intend to lodge an application under section 44 in relation to the amalgamation within the prescribed period, the Commission must grant the application for recognition as a federation.

#### *Registration of federation*

- (4) If the application is granted, the Industrial Registrar must enter in the register kept under paragraph 13(1)(a) such details in relation to the federation as are prescribed.

#### *Representation rights of federation*

- (5) On registration, the federation may, subject to subsection (6) and the regulations, represent its constituent members for all of the purposes of this Schedule and the Workplace Relations Act.
- (6) Subsection (5) does not authorise the federation to become a party to an award or to become bound by a certified agreement or old IR agreement.

#### *Federation may vary its composition*

- (7) After the federation is registered, it may vary its composition by:

- (a) including, with the approval of the Commission, another organisation within the federation if the other organisation intends to become concerned in the amalgamation; or
- (b) releasing, with the approval of the Commission, an organisation from the federation.

*When federation ceases to exist*

- (8) The federation ceases to exist:
  - (a) on the day on which the amalgamation takes effect; or
  - (b) if an application under section 44 is not lodged in relation to the amalgamation within the prescribed period—on the day after the end of the period; or
  - (c) if it appears to a Full Bench, on an application by a prescribed person, that the industrial conduct of the federation, or an organisation belonging to the federation, is preventing or hindering the attainment of an object of this Schedule or the Workplace Relations Act—on the day the Full Bench so determines.

*Federation does not limit representation rights of organisations*

- (9) Nothing in this section limits the right of an organisation belonging to a federation to represent itself or its members.

### **39 Use of resources to support proposed amalgamation**

- (1) An existing organisation concerned in a proposed amalgamation may, at any time before the closing day of the ballot for the amalgamation, use its financial and other resources in support of the proposed principal amalgamation and any proposed alternative amalgamation if:
  - (a) the committee of management of the organisation has resolved that the organisation should so use its resources; and
  - (b) the committee of management has given reasonable notice of its resolution to the members of the organisation.
- (2) Subsection (1) does not limit by implication any power that the existing organisation has, apart from that subsection, to use its financial and other resources in support of, or otherwise in relation to, the amalgamation.

## **Division 3—Commencement of amalgamation procedure**

### **40 Scheme for amalgamation**

- (1) There is to be a scheme for every proposed amalgamation.
- (2) The scheme must contain the following matters:
  - (a) a general statement of the nature of the amalgamation, identifying the existing organisations concerned and indicating:
    - (i) if one of the existing organisations is the proposed amalgamated organisation—that fact; and
    - (ii) if an association proposed to be registered as an organisation is the proposed amalgamated organisation—that fact and the name of the association; and
    - (iii) the proposed de-registering organisations;
  - (b) if it is proposed to change the name of an existing organisation—particulars of the proposed change;
  - (c) if it is proposed to alter the eligibility rules of an existing organisation—particulars of the proposed alterations;
  - (d) if it is proposed to alter any other rules of an existing organisation—particulars of the proposed alterations;
  - (e) if an association is proposed to be registered as an organisation—the eligibility and other rules of the association;
  - (f) such other matters as are prescribed.
- (3) Subsection (2) does not limit by implication the matters that the scheme may contain.

### **41 Alternative scheme for amalgamation**

- (1) Where 3 or more existing organisations are concerned in a proposed amalgamation, the scheme for the amalgamation may contain a provision to the effect that, if:
  - (a) the members of one or more of the organisations do not approve the amalgamation; and

- (b) the members of 2 or more of the organisations (in this subsection called the *approving organisations*) approve, in the alternative, the amalgamation so far as it involves:
    - (i) the other of the approving organisations; or
    - (ii) 2 or more of the other approving organisations; and
  - (c) where one of the existing organisations is the proposed amalgamated organisation—that organisation is one of the approving organisations;  
there is to be an amalgamation involving the approving organisations.
- (2) If the scheme for a proposed amalgamation contains an alternative provision, the scheme must also contain particulars of:
- (a) the differences between the proposed principal amalgamation and each proposed alternative amalgamation; and
  - (b) the differences between the rules of any association proposed to be registered as an organisation, and any proposed alterations of the rules of the existing organisations, under the proposed principal amalgamation and each proposed alternative amalgamation.

#### **42 Approval by committee of management**

- (1) The scheme for a proposed amalgamation, and each alteration of the scheme, must be approved, by resolution, by the committee of management of each existing organisation concerned in the amalgamation.
- (2) Despite anything in the rules of an existing organisation, approval, by resolution, by the committee of management of the scheme, or an alteration of the scheme, is taken to be sufficient compliance with the rules, and any proposed alteration of the rules contained in the scheme, or the scheme as altered, is taken to have been properly made under the rules.

#### **43 Community of interest declaration**

*Existing organisations may apply for declaration*

- (1) The existing organisations concerned in a proposed amalgamation may jointly lodge in the Industrial Registry an application for a declaration under this section in relation to the amalgamation.

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- (2) The application must be lodged:
  - (a) before an application has been lodged under section 44 in relation to the amalgamation; or
  - (b) with the application that is lodged under section 44 in relation to the amalgamation.
- (3) If the application is lodged before an application has been lodged under section 44 in relation to the amalgamation, the Commission:
  - (a) must immediately fix a time and place for hearing submissions in relation to the making of the declaration; and
  - (b) must ensure that all organisations are promptly notified of the time and place of the hearing; and
  - (c) may inform any other person who is likely to be interested of the time and place of the hearing.

*Making of declaration*

- (4) If, at the conclusion of the hearing arranged under subsection (3) or section 53 in relation to the proposed amalgamation, the Commission is satisfied that there is a community of interest between the existing organisations in relation to their industrial interests, the Commission must declare that it is so satisfied.

*Pre-conditions to making of declaration*

- (5) The Commission must be satisfied, for the purposes of subsection (4), that there is a community of interest between organisations of employees in relation to their industrial interests if the Commission is satisfied that a substantial number of members of one of the organisations are:
  - (a) eligible to become members of the other organisation or each of the other organisations; or
  - (b) engaged in the same work or in aspects of the same or similar work as members of the other organisation or each of the other organisations; or
  - (c) bound by the same awards as members of the other organisation or each of the other organisations; or
  - (d) employed in the same or similar work by employers engaged in the same industry as members of the other organisation or each of the other organisations; or

- (e) engaged in work, or in industries, in relation to which there is a community of interest with members of the other organisation or each of the other organisations.
- (6) The Commission must be satisfied, for the purposes of subsection (4), that there is a community of interest between organisations of employers in relation to their industrial interests if the Commission is satisfied that a substantial number of members of one of the organisations are:
  - (a) eligible to become members of the other organisation or each of the other organisations; or
  - (b) engaged in the same industry or in aspects of the same industry or similar industries as members of the other organisation or each of the other organisations; or
  - (c) bound by the same awards as members of the other organisation or each of the other organisations; or
  - (d) engaged in industries in relation to which there is a community of interest with members of the other organisation or each of the other organisations.
- (7) Subsections (5) and (6) do not limit by implication the circumstances in which the Commission may be satisfied, for the purposes of subsection (4), that there is a community of interest between organisations in relation to their industrial interests.

*Circumstances in which declaration ceases to be in force*

- (8) If:
  - (a) an application for a declaration under this section in relation to a proposed amalgamation is lodged before an application has been lodged under section 44 in relation to the amalgamation; and
  - (b) a declaration is made under this section in relation to the amalgamation; and
  - (c) an application is not lodged under section 44 in relation to the amalgamation within 6 months after the declaration is made;the declaration ceases to be in force.
- (9) The Commission may revoke a declaration under this section if the Commission is satisfied that there is no longer a community of

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interest between the organisations concerned in relation to their industrial interests.

- (10) However, before the Commission revokes the declaration, it must:
- (a) give reasonable notice of its intention to revoke to each of the organisations that applied for the declaration; and
  - (b) give each of those organisations an opportunity to be heard.

**44 Application for approval for submission of amalgamation to ballot**

- (1) The existing organisations concerned in a proposed amalgamation, and any association proposed to be registered as an organisation under the amalgamation, must jointly lodge in the Industrial Registry an application for approval for the submission of the amalgamation to ballot.
- (2) The application must be accompanied by:
  - (a) a copy of the scheme for the amalgamation; and
  - (b) a written outline of the scheme.
- (3) Subject to section 62, the outline must, in no more than 3,000 words, provide sufficient information on the scheme to enable members of the existing organisations to make informed decisions in relation to the scheme.

**45 Holding office after amalgamation**

- (1) The rules of:
  - (a) an association proposed to be registered as an organisation that is the proposed amalgamated organisation under a proposed amalgamation; or
  - (b) an existing organisation that is the proposed amalgamated organisation under a proposed amalgamation;may, despite section 143, make provision in relation to:
  - (c) the holding of office in the proposed amalgamated organisation by persons holding office in any of the proposed de-registering organisations immediately before the amalgamation takes effect; and
  - (d) in a case to which paragraph (b) applies—the continuation of the holding of office by persons holding office in the



proposed amalgamated organisation immediately before the amalgamation takes effect;

but the rules may not permit an office to be held under paragraph (c) or (d) for longer than:

- (e) the period that equals the unexpired part of the term of the office held by the person immediately before the day on which the amalgamation takes effect; or
- (f) the period that ends 2 years after that day;

whichever ends last, without an ordinary election being held in relation to the office.

(2) Where:

(a) a person holds an office in an organisation, being an office held under rules made under subsection (1); and

(b) that organisation is involved in a proposed amalgamation; the rules of the proposed amalgamated organisation must not permit the person to hold an office in the proposed amalgamated organisation after the amalgamation takes effect, without an ordinary election being held in relation to the office, for longer than the period that equals the unexpired part of the term of the office mentioned in paragraph (a) immediately before the day on which the amalgamation takes effect.

(3) The rules of an organisation that is the proposed amalgamated organisation under a proposed amalgamation must, subject to this section, make reasonable provision for the purpose of synchronising elections for offices in the organisation held under paragraph (1)(c) with elections for other offices in the organisation.

(4) Section 145 does not apply to an office held under rules made under subsection (1).

(5) Section 146 applies to an office held under rules made under paragraph (1)(c).

(6) In this section:

**ordinary election** means an election held under rules that comply with section 143.

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**46 Application for exemption from ballot**

- (1) The proposed amalgamated organisation under a proposed amalgamation may lodge in the Industrial Registry an application for exemption from the requirement that a ballot of its members be held in relation to the amalgamation.
- (2) The application must be lodged with the application that is lodged under section 44 in relation to the amalgamation.

**47 Application for ballot not conducted under section 65**

- (1) An existing organisation concerned in a proposed amalgamation may lodge in the Industrial Registry an application for approval of a proposal for the submission of the amalgamation to a ballot of its members that is not conducted under section 65.
- (2) The application must be lodged with the application that is lodged under section 44 in relation to the amalgamation.

**48 Lodging “yes” case**

- (1) Subject to section 60, an existing organisation concerned in a proposed amalgamation may lodge a written statement of not more than 2,000 words in support of the proposed principal amalgamation and each proposed alternative amalgamation.
- (2) The statement must be lodged with the application that is lodged under section 44 in relation to the amalgamation.

## **Division 4—Role of AEC**

### **49 Ballots to be conducted by AEC**

All ballots under this Part are to be conducted by the AEC.

### **50 Notification of AEC**

- (1) Where an application is lodged under section 44 in relation to a proposed amalgamation, the Industrial Registrar must immediately notify the AEC of the application.
- (2) On being notified of the application, the AEC must immediately take such action as it considers necessary or desirable to enable it to conduct as quickly as possible any ballots that may be required in relation to the amalgamation.

### **51 Providing information etc. to electoral officials**

- (1) An electoral official who is authorised, in writing, by the AEC for the purposes of a proposed amalgamation may, where it is reasonably necessary for the purposes of any ballot that may be required or is required in relation to the amalgamation, by written notice, require an officer or employee of the organisation concerned or a branch of the organisation concerned:
  - (a) to give to the electoral official, within the period (being a period of not less than 7 days after the notice is given), and in the manner, specified in the notice, any information within the knowledge or in the possession of the person; and
  - (b) to produce or make available to the electoral official, at a reasonable time (being a time not less than 7 days after the notice is given) and place specified in the notice, any documents:
    - (i) in the custody or under the control of the person; or
    - (ii) to which the person has access.
- (2) An officer or employee of an organisation or branch of an organisation commits an offence if he or she fails to comply with a requirement made under subsection (1).

Maximum penalty: 30 penalty units.

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- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

- (5) A person is not excused from giving information or producing or making available a document under this section on the ground that the information or the production or making available of the document might tend to incriminate the person or expose the person to a penalty.

- (6) However:

- (a) giving the information or producing or making available the document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing or making available the document;

is not admissible in evidence against the person in criminal proceedings or proceedings that may expose the person to a penalty, other than proceedings under, or arising out of, subsection 52(3).

- (7) If any information or document specified in a notice under subsection (1) is kept in electronic form, the electoral official may require it to be made available in that form.

### **52 Declaration by secretary etc. of organisation**

- (1) If a requirement is made under subsection 51(1) in relation to the register, or part of the register, kept by an organisation under section 230, the secretary or other prescribed officer of the organisation must make a declaration, in accordance with subsection (2), that the register has been maintained as required by subsection 230(2).

Note: This subsection is a civil penalty provision (see section 305).

- (2) The declaration must be:

- (a) signed by the person making it; and

- (b) given to the returning officer, and lodged in the Industrial Registry, as soon as practicable but no later than the day before the first day of voting in the relevant election.
- (3) A person must not, in a declaration for the purposes of subsection (1), make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This subsection is a civil penalty provision (see section 305).

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**Division 5—Procedure for approval of amalgamation**

**53 Fixing hearing in relation to amalgamation etc.**

Where an application is lodged under section 44 in relation to a proposed amalgamation, the Commission:

- (a) must immediately fix a time and place for hearing submissions in relation to:
  - (i) the granting of an approval for the submission of the amalgamation to ballot; and
  - (ii) if an application for a declaration under section 43 was lodged with the application—the making of a declaration under section 43 in relation to the amalgamation; and
  - (iii) if an application was lodged under section 46 for exemption from the requirement that a ballot be held in relation to the amalgamation—the granting of the exemption; and
  - (iv) if an application was lodged under section 47 for approval of a proposal for the submission of the amalgamation to a ballot that is not conducted under section 65—the granting of the approval; and
- (b) must ensure that all organisations are promptly notified of the time and place of the hearing; and
- (c) may inform any other person who is likely to be interested of the time and place of the hearing.

**54 Submissions at amalgamation hearings**

- (1) Submissions at a hearing arranged under subsection 43(3) or section 53 may only be made under this section.
- (2) Submissions may be made by the applicants.
- (3) Submissions may be made by another person only with the leave of the Commission and may be made by the person only in relation to a prescribed matter.

**55 Approval for submission to ballot of amalgamation not involving extension of eligibility rules etc.**

*Approval must be given if certain conditions satisfied*

- (1) If, at the conclusion of the hearing arranged under section 53 in relation to a proposed amalgamation, the Commission is satisfied that:
- (a) the amalgamation does not involve the registration of an association as an organisation; and
  - (b) a person who is not eligible for membership of an existing organisation concerned in the amalgamation would not be eligible for membership of the proposed amalgamated organisation immediately after the amalgamation takes effect; and
  - (c) any proposed alteration of the name of an existing organisation concerned in the amalgamation will not result in the organisation having a name that is the same as the name of another organisation or is so similar to the name of another organisation as to be likely to cause confusion; and
  - (d) any proposed alterations of the rules of an existing organisation comply with, and are not contrary to, this Schedule, the Workplace Relations Act, awards, certified agreements and old IR agreements, and are not contrary to law; and
  - (e) any proposed de-registration of an existing organisation complies with this Schedule and is not otherwise contrary to law;

the Commission must approve the submission of the amalgamation to ballot.

*Approval generally refused if conditions not satisfied*

- (2) If the Commission is not satisfied, the Commission must, subject to subsections (3) and (7), refuse to approve, under this section, the submission of the amalgamation to ballot.

*Approval may be given if conditions will be satisfied later*

- (3) If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may:

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- (a) permit the applicants to alter the scheme for the amalgamation, including any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or
- (b) accept an undertaking by the applicants to alter the scheme for the amalgamation, including any proposed alterations of the rules of the existing organisations concerned in the amalgamation;

and, if the Commission is satisfied that the matters mentioned in subsection (1) will be met, the Commission must approve the submission of the amalgamation to ballot.

*Permission to alter amalgamation scheme*

- (4) A permission under paragraph (3)(a):
  - (a) may, despite anything in the rules of an existing organisation concerned in the proposed amalgamation, authorise the organisation to alter the scheme (including any proposed alterations of the rules of the organisation) by resolution of its committee of management; and
  - (b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and
  - (c) may be given subject to conditions.

*Powers of Commission if conditions or undertakings breached*

- (5) If:
  - (a) the Commission:
    - (i) gives a permission under paragraph (3)(a) subject to conditions; or
    - (ii) accepts an undertaking under paragraph (3)(b); and
  - (b) the conditions are breached or the undertaking is not fulfilled within the period allowed by the Commission;the Commission may:
  - (c) amend the scheme for the amalgamation, including any proposed alterations of the rules of the existing organisations concerned in the proposed amalgamation; or
  - (d) give directions and orders:



- (i) in relation to the conduct of the ballot for the amalgamation; or
  - (ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.
- (6) Subsection (5) does not limit by implication the powers that the Commission has apart from that subsection.

*Powers of Commission to adjourn proceeding*

- (7) If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may adjourn the proceeding.
- (8) Subsection (7) does not limit by implication the power of the Commission to adjourn the proceeding at any stage.

**56 Objections in relation to amalgamation involving extension of eligibility rules etc.**

- (1) Objection to a matter involved in a proposed amalgamation may only be made to the Commission under this section.
- (2) Objection may be made to the Commission in relation to the amalgamation only if the Commission has refused to approve, under section 55, the submission of the amalgamation to ballot.
- (3) Objection may be made by a prescribed person on a prescribed ground.
- (4) The Commission is to hear, as prescribed, all objections duly made to the amalgamation.

**57 Approval for submission to ballot of amalgamation involving extension of eligibility rules etc.**

*Approval must be given if certain conditions satisfied*

- (1) If, after the prescribed time allowed for making objections under section 56 in relation to a proposed amalgamation and after hearing any objections duly made to the amalgamation, the Commission:
  - (a) finds that no duly made objection is justified; and
  - (b) is satisfied that, so far as the amalgamation involves:

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(i) the registration of an association; or  
(ii) a change in the name of an organisation; or  
(iii) an alteration of the rules of an organisation; or  
(iv) the de-registration of an organisation under this Part;  
it complies with, and is not contrary to, this Schedule, the Workplace Relations Act, awards, certified agreements and old IR agreements and is not otherwise contrary to law;  
the Commission must approve the submission of the amalgamation to ballot.

*Approval generally refused if conditions not satisfied*

- (2) If the Commission is not satisfied, the Commission must, subject to subsections (3) and (8), refuse to approve, under this section, the submission of the amalgamation to ballot.

*Approval may be given if conditions will be satisfied later*

- (3) If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may:
- (a) permit the applicants to alter the scheme for the amalgamation, including:
    - (i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or
    - (ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or
  - (b) accept an undertaking by the applicants to alter the scheme for the amalgamation, including:
    - (i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or
    - (ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation;
- and, if the Commission is satisfied that the matters mentioned in subsection (1) will be met, the Commission must approve the submission of the amalgamation to ballot.

*Permission to alter amalgamation scheme*

- (4) A permission under subparagraph (3)(a)(i):

- (a) may, despite anything in the rules of any association proposed to be registered as an organisation in relation to the proposed amalgamation, authorise the existing organisations concerned in the amalgamation to alter the scheme so far as it affects that association (including any of its rules) by resolution of their committees of management; and
  - (b) may make provision in relation to the procedure that, despite anything in the rules of the existing organisations or the rules of the association, may be followed, or is to be followed, by the committees of management in that regard; and
  - (c) may be given subject to conditions.
- (5) A permission under subparagraph (3)(a)(ii):
- (a) may, despite anything in the rules of an existing organisation concerned in the proposed amalgamation, authorise the organisation to alter the scheme (including any proposed alterations of the rules of the organisation, but not including the scheme so far as it affects any association proposed to be registered as an organisation in relation to the proposed amalgamation) by resolution of its committee of management; and
  - (b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and
  - (c) may be given subject to conditions.

*Powers of Commission if conditions or undertakings breached*

- (6) If:
- (a) the Commission:
    - (i) gives a permission under paragraph (3)(a) subject to conditions; or
    - (ii) accepts an undertaking under paragraph (3)(b); and
  - (b) the conditions are breached or the undertaking is not fulfilled within the period allowed by the Commission;
- the Commission may:
- (c) amend the scheme for the amalgamation, including:
    - (i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or

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- (ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or
- (d) give directions and orders:
  - (i) in relation to the conduct of the ballot for the amalgamation; or
  - (ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.
- (7) Subsection (6) does not limit by implication the powers that the Commission has apart from that subsection.

*Powers of Commission to adjourn proceeding*

- (8) If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may adjourn the proceeding.
- (9) Subsection (8) does not limit by implication the power of the Commission to adjourn the proceeding at any stage.

**58 Fixing commencing and closing days of ballot**

- (1) If the Commission approves, under section 55 or 57, the submission of a proposed amalgamation to ballot, the Commission must, after consulting with the Electoral Commissioner, fix a day as the commencing day of the ballot and a day as the closing day of the ballot.
- (2) The commencing day must be a day not later than 28 days after the day on which the approval is given unless:
  - (a) the Commission is satisfied that the AEC requires a longer period to make the arrangements necessary to enable it to conduct the ballot; or
  - (b) the existing organisations concerned in the amalgamation request the Commission to fix a later day.
- (3) If the scheme for the amalgamation contains a proposed alternative provision, a single day is to be fixed as the commencing day, and a single day is to be fixed as the closing day, for all ballots in relation to the proposed amalgamation.
- (4) The Commission may, after consulting with the Electoral Commissioner, vary the commencing day or the closing day.

- (5) Subsection (4) does not limit by implication the powers of the person conducting a ballot under this Part.

### **59 Roll of voters for ballot**

The roll of voters for a ballot for a proposed amalgamation is the roll of persons who, on the day on which the Commission fixes the commencing day and closing day of the ballot or 28 days before the commencing day of the ballot (whichever is the later):

- (a) have the right under the rules of the existing organisation concerned to vote at such a ballot; or
- (b) if the rules of the existing organisation concerned do not then provide for the right to vote at such a ballot—have the right under the rules of the organisation to vote at a ballot for an election for an office in the organisation that is conducted by a direct voting system.

### **60 “Yes” case and “no” case for amalgamation**

*“Yes” statement may be altered*

- (1) If an existing organisation concerned in a proposed amalgamation lodges a statement under section 48 in relation to the amalgamation, the Commission may permit the organisation to alter the statement.

*Members of organisation may lodge “no” statement*

- (2) Not later than 7 days before the day fixed under section 53 for hearing submissions in relation to the amalgamation, members of the organisation (being members whose number is at least the required minimum number) may lodge in the Industrial Registry a written statement of not more than 2,000 words in opposition to the proposed principal amalgamation and any proposed alternative amalgamation.

*“No” statement may be altered*

- (3) The Commission may permit a statement lodged under subsection (2) to be altered.

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*“Yes” and “no” statements to be sent to voters*

- (4) Subject to subsections (5), (6) and (7), a copy of the statements mentioned in subsections (1) and (2), or, if those statements have been altered or amended, those statements as altered or amended, must accompany the ballot paper sent to the persons entitled to vote at a ballot for the amalgamation.

*2 or more “no” statements must be combined*

- (5) If 2 or more statements in opposition to the amalgamation are duly lodged in the Industrial Registry under subsection (2):
- (a) the Commission must prepare, or cause to be prepared, in consultation, if practicable, with representatives of the persons who lodged each of the statements, a written statement of not more than 2,000 words in opposition to the amalgamation based on both or all the statements and, as far as practicable, presenting fairly the substance of the arguments against the amalgamation contained in both or all the statements; and
  - (b) the statement prepared by the Commission must accompany the ballot paper for the amalgamation as if it had been the sole statement lodged under subsection (2).

*Commission may correct factual errors in statements*

- (6) The Commission may amend a statement mentioned in subsection (1) or (2) to correct factual errors or to ensure that the statement complies with this Schedule.

*Statements may include photos etc. if Commission approves*

- (7) A statement mentioned in subsection (1) or (2) may, if the Commission approves, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.
- (8) A statement prepared under subsection (5) may include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

*Certain statements not required to be sent to voters*

- (9) Subsection (4) and paragraph (5)(b) do not apply to a ballot that is not conducted under section 65.

Note: Ballots conducted under section 65 are secret postal ballots.

*Definition*

- (10) In this section:

***required minimum number***, in relation to an organisation, means:

- (a) 5% of the total number of members of the organisation on the day on which the application was lodged under section 44 in relation to the proposed amalgamation concerned; or
- (b) 1,000;

whichever is the lesser.

## **61 Alteration and amendment of scheme**

*Permission to alter amalgamation scheme*

- (1) The Commission may, at any time before the commencing day of the ballot for a proposed amalgamation, permit the existing organisations concerned in the amalgamation to alter the scheme for the amalgamation, including:
- (a) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or
  - (b) any proposed alterations of the rules of the existing organisations concerned in the amalgamation.

*Permission relating to rules of new organisations*

- (2) A permission under paragraph (1)(a):
- (a) may, despite anything in the rules of any association proposed to be registered as an organisation in relation to the proposed amalgamation, authorise the existing organisations concerned in the amalgamation to alter the scheme so far as it affects that association (including any of its rules) by resolution of their committees of management; and
  - (b) may make provision in relation to the procedure that, despite anything in the rules of the existing organisations or the rules

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of the association, may be followed, or is to be followed, by the committees of management in that regard; and

(c) may be given subject to conditions.

*Permission relating to rules of existing organisations*

(3) A permission under paragraph (1)(b):

(a) may, despite anything in the rules of an existing organisation concerned in a proposed amalgamation, authorise the organisation to amend the scheme (including any proposed alterations of the rules of the organisation, but not including the scheme so far as it affects any association proposed to be registered as an organisation in relation to the proposed amalgamation) by resolution of its committee of management; and

(b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and

(c) may be given subject to conditions.

*Powers of Commission if conditions breached*

(4) If:

(a) the Commission gives a permission under subsection (1) subject to conditions; and

(b) the conditions are breached;

the Commission may:

(c) amend the scheme for the amalgamation, including:

(i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or

(ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or

(d) give directions and orders:

(i) in relation to the conduct of the ballot for the amalgamation; or

(ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.

(5) Subsection (4) does not limit by implication the powers that the Commission has apart from that subsection.



*Outline of scheme must change if scheme changes*

- (6) If the scheme for the amalgamation is altered or amended (whether under this section or otherwise), the outline of the scheme must be altered or amended to the extent necessary to reflect the alterations or amendments.

## **62 Outline of scheme for amalgamation**

- (1) The outline of the scheme for a proposed amalgamation may, if the Commission approves, consist of more than 3,000 words.
- (2) The outline may, if the Commission approves, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.
- (3) The Commission:
  - (a) may, at any time before the commencing day of the ballot for the amalgamation, permit the existing organisations concerned in the amalgamation to alter the outline; and
  - (b) may amend the outline to correct factual errors or otherwise to ensure that it complies with this Schedule.

## **63 Exemption from ballot**

- (1) If:
  - (a) an application was lodged under section 46 for exemption from the requirement that a ballot be held in relation to a proposed amalgamation; and
  - (b) the total number of members that could be admitted to membership of the proposed amalgamated organisation on, and because of, the amalgamation does not exceed 25% of the number of members of the applicant organisation on the day on which the application was lodged;the Commission must, at the conclusion of the hearing arranged under section 53 in relation to the amalgamation, grant the exemption unless the Commission considers that, in the special circumstances of the case, the exemption should be refused.
- (2) If the exemption is granted, the members of the applicant organisation are taken to have approved the proposed principal amalgamation and each proposed alternative amalgamation (if any).

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**64 Approval for ballot not conducted under section 65**

If:

- (a) an application was lodged under section 47 for approval of a proposal for submission of a proposed amalgamation to ballot that is not conducted under section 65; and
- (b) the proposal provides for:
  - (i) the ballot to be by secret ballot of the members of the organisation; and
  - (ii) the ballot to be held at duly constituted meetings of the members; and
  - (iii) the ballot to be conducted by the AEC; and
  - (iv) the members to be given at least 21 days' notice of the meetings, the matters to be considered at the meetings and their entitlement to an absent vote; and
  - (v) the distribution or publication of:
    - (A) the outline of the scheme for the amalgamation; and
    - (B) the statements mentioned in subsections 60(1) and (2); and
  - (vi) absent voting; and
  - (vii) the ballot to be otherwise conducted in accordance with the regulations; and
- (c) the Commission is satisfied, after consulting with the Electoral Commissioner:
  - (i) that the proposal is practicable; and
  - (ii) that approval of the proposal is likely:
    - (A) to result in participation by members of the organisation that is fuller than the participation that would have been likely to have resulted if the ballot were conducted under section 65; and
    - (B) to give the members of the organisation an adequate opportunity to vote on the amalgamation without intimidation;

the Commission must, at the conclusion of the hearing arranged under section 53 in relation to the amalgamation, approve the proposal.

## **65 Secret postal ballot of members**

### *Ballot on proposed principal amalgamation*

- (1) If the Commission approves, under section 55 or 57, the submission of a proposed amalgamation to ballot, the AEC must, in relation to each of the existing organisations concerned in the amalgamation, conduct a secret postal ballot of the members of the organisation on the question whether they approve the proposed principal amalgamation.

### *Ballot at same time on proposed alternative amalgamation*

- (2) If the scheme for the amalgamation contains a proposed alternative provision, the AEC must also conduct, at the same time and in the same way as the ballot under subsection (1), a ballot of the members of each of the existing organisations on the question or questions whether, if the proposed principal amalgamation does not take place, they approve the proposed alternative amalgamation or each proposed alternative amalgamation.

### *Same ballot paper to be used for both ballots*

- (3) If, under subsection (2), the AEC is required to conduct 2 or more ballots of the members of an organisation at the same time, the same ballot paper is to be used for both or all the ballots.

### *Counting of votes in alternative amalgamation ballot*

- (4) A person conducting a ballot under subsection (2) need not count the votes in the ballot if the person is satisfied that the result of the ballot will not be required to be known for the purposes of this Schedule.

### *Copy of outline to be sent to voters*

- (5) A copy of the outline of the scheme for the amalgamation as lodged under this Part, or, if the scheme has been altered or amended, a copy of the outline of the scheme as altered or amended, is to accompany the ballot paper sent to a person entitled to vote at the ballot.

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*Conduct of ballot*

- (6) In a ballot conducted under this section, each completed ballot paper must be returned to the AEC as follows:
  - (a) the ballot paper must be in the declaration envelope provided to the voter with the ballot paper;
  - (b) the declaration envelope must be in another envelope that is in the form prescribed by the regulations.
- (8) Subject to this section, a ballot conducted under this section is to be conducted as prescribed.

*Organisation may be exempt from requirements of this section*

- (9) This section does not apply to an existing organisation concerned in the amalgamation if:
  - (a) the Commission has granted the organisation an exemption under section 63 from the requirement that a ballot be held in relation to the proposed amalgamation; or
  - (b) the Commission has approved under section 64 a proposal by the organisation for the submission of the amalgamation to a ballot that is not conducted under this section.

**66 Determination of approval of amalgamation by members**

Where the question of a proposed amalgamation is submitted to a ballot of the members of an existing organisation concerned in the amalgamation, the members of the organisation approve the amalgamation if, and only if:

- (a) where a declaration under section 43 is in force in relation to the proposed amalgamation—more than 50% of the formal votes cast in the ballot are in favour of the amalgamation; or
- (b) in any other case:
  - (i) at least 25% of the members on the roll of voters cast a vote in the ballot; and
  - (ii) more than 50% of the formal votes cast are in favour of the amalgamation.

**67 Further ballot if amalgamation not approved**

- (1) If:

- (a) the question of a proposed amalgamation is submitted to a ballot of the members of an existing organisation; and
  - (b) the members of the organisation do not approve the amalgamation;

the existing organisations concerned in the amalgamation may jointly lodge in the Industrial Registry a further application under section 44 for approval for the submission of the amalgamation to ballot.
- (2) If the application is lodged within 12 months after the result of the ballot is declared, the Commission may order:
  - (a) that any step in the procedure provided by this Part be dispensed with in relation to the proposed amalgamation; or
  - (b) that a fresh ballot be conducted in place of an earlier ballot in the amalgamation;

and the Commission may give such directions and make such further orders as the Commission considers necessary or desirable.
- (3) Subsection (2) does not by implication require a further application under section 44 to be lodged within the 12 month period mentioned in that subsection.

## **68 Post-ballot report by AEC**

- (1) After the completion of a ballot under this Part, the AEC must give a report on the conduct of the ballot to:
  - (a) the Federal Court; and
  - (b) the Industrial Registrar; and
  - (c) each applicant under section 44.
- (2) The report must include details of the prescribed matters.
- (3) If the AEC is of the opinion that the register of members, or the part of the register, made available to the AEC for the purposes of the ballot contained, at the time of the ballot:
  - (a) an unduly large proportion of members' addresses that were not current; or
  - (b) an unduly large proportion of members' addresses that were workplace addresses;

this fact must be included in the report.
- (4) Subsection (3) applies only in relation to postal ballots.

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## 69 Inquiries into irregularities

- (1) Not later than 30 days after the result of a ballot under this Part is declared, application may be made to the Federal Court, as prescribed, for an inquiry by the Court into alleged irregularities in relation to the ballot.
- (2) If the Court finds that there has been an irregularity that may affect, or may have affected, the result of the ballot, the Court may:
  - (a) if the ballot has not been completed—order that a step in relation to the ballot be taken again; or
  - (b) in any other case—order that a fresh ballot be conducted in place of the ballot in which the irregularity happened;and may make such further orders as it considers necessary or desirable.
- (3) The regulations may make provision with respect to the procedure for inquiries by the Court into alleged irregularities in relation to ballots under this Part, and for matters relating to, or arising out of, inquiries.

## 70 Approval of amalgamation

- (1) If the members of each of the existing organisations concerned in a proposed amalgamation approve the proposed principal amalgamation, the proposed principal amalgamation is approved for the purposes of this Part.
- (2) If:
  - (a) the scheme for a proposed amalgamation contains an alternative provision; and
  - (b) the members of one or more of the existing organisations concerned in the amalgamation do not approve the proposed principal amalgamation; and
  - (c) the members of 2 or more of the organisations (in paragraph (d) called the **approving organisations**) approve a proposed alternative amalgamation; and
  - (d) where one of the existing organisations is the proposed amalgamated organisation—that organisation is one of the approving organisations;the proposed alternative amalgamation is approved for the purposes of this Part.

## **71 Expenses of ballot**

The expenses of a ballot under this Part are to be borne by the Commonwealth.

## **72 Offences in relation to ballot**

### *Interference with ballot papers*

- (1) A person commits an offence in relation to a ballot if the person:
- (a) impersonates another person with the intention of:
    - (i) securing a ballot paper to which the impersonator is not entitled; or
    - (ii) casting a vote; or
  - (b) does an act that results in a ballot paper or envelope being destroyed, defaced, altered, taken or otherwise interfered with; or
  - (c) fraudulently puts a ballot paper or other paper:
    - (i) into a ballot box or other ballot receptacle; or
    - (ii) into the post; or
  - (d) delivers a ballot paper or other paper to a person other than a person receiving ballot papers for the purposes of the ballot; or
  - (e) records a vote that the person is not entitled to record; or
  - (f) records more than one vote; or
  - (g) forges a ballot paper or envelope, or utters a ballot paper or envelope that the person knows to be forged; or
  - (h) provides a ballot paper without authority; or
  - (i) obtains a ballot paper which the person is not entitled to obtain; or
  - (j) has possession of a ballot paper which the person is not entitled to possess; or
  - (k) does an act that results in a ballot box or other ballot receptacle being destroyed, taken, opened or otherwise interfered with.

Maximum penalty: 30 penalty units.

### *Hindering the ballot, threats and bribes etc.*

- (2) A person commits an offence in relation to a ballot if the person:

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- (a) hinders or obstructs the taking of the ballot; or
- (b) uses any form of intimidation or inducement to prevent from voting, or to influence the vote of, a person entitled to vote at the ballot; or
- (c) threatens, offers or suggests, or uses, causes or inflicts, any violence, injury, punishment, damage, loss or disadvantage with the intention of influencing or affecting:
  - (i) any vote or omission to vote; or
  - (ii) any support of, or opposition to, voting in a particular manner; or
  - (iii) any promise of any vote, omission, support or opposition; or
- (d) gives, or promises or offers to give, any property or benefit of any kind with the intention of influencing or affecting anything referred to in subparagraph (c)(i), (ii) or (iii); or
- (e) asks for or obtains, or offers or agrees to ask for or obtain, any property or benefit of any kind (whether for that person or another person), on the understanding that anything referred to in subparagraph (c)(i), (ii) or (iii) will be influenced or affected in any way; or
- (f) counsels or advises a person entitled to vote to refrain from voting.

Maximum penalty: 30 penalty units.

*Secrecy of vote*

- (3) A person (the **relevant person**) commits an offence in relation to a ballot if:
  - (a) the relevant person requests, requires or induces another person:
    - (i) to show a ballot paper to the relevant person; or
    - (ii) to permit the relevant person to see a ballot paper;in such a manner that the relevant person can see the vote while the ballot paper is being marked or after it has been marked; or
  - (b) in the case where the relevant person is a person performing duties for the purposes of the ballot—the relevant person shows another person, or permits another person to have access to, a ballot paper used in the ballot, otherwise than in the performance of the duties.



Maximum penalty: 30 penalty units.

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**Division 6—Amalgamation taking effect**

**73 Action to be taken after ballot**

- (1) The scheme of a proposed amalgamation that is approved for the purposes of this Part takes effect in accordance with this section.
- (2) If the Commission is satisfied that:
  - (a) the period, or the latest of the periods, within which application may be made to the Federal Court under section 69 in relation to the amalgamation has ended; and
  - (b) any application to the Federal Court under section 69 has been disposed of, and the result of any fresh ballot ordered by the Court has been declared; and
  - (c) there are no proceedings (other than civil proceedings) pending against any of the existing organisations concerned in the amalgamation in relation to:
    - (i) contraventions of this Schedule, the Workplace Relations Act or other Commonwealth laws; or
    - (ii) breaches of:
      - (A) awards or certified agreements or old IR agreements; or
      - (B) orders made under this Schedule, the Workplace Relations Act or other Commonwealth laws; and
  - (d) any obligation that an existing organisation has under a law of the Commonwealth that is not fulfilled by the time the amalgamation takes effect will be regarded by the proposed amalgamated organisation as an obligation it is bound to fulfil under the law concerned;the Commission must, after consultation with the existing organisations, by notice published as prescribed, fix a day (in this Division called the ***amalgamation day***) as the day on which the amalgamation is to take effect.
- (3) On the amalgamation day:
  - (a) if the proposed amalgamated organisation is not already registered—the Industrial Registrar must enter, in the register kept under paragraph 13(1)(a), such particulars in relation to

the organisation as are prescribed, and the date of the entry;  
and

- (b) any proposed alteration of the rules of an existing organisation concerned in the amalgamation takes effect; and
- (c) the Commission must de-register the proposed de-registering organisations; and
- (d) the persons who, immediately before that day, were members of a proposed de-registering organisation become, by force of this section and without payment of entrance fee, members of the proposed amalgamated organisation.

(4) If:

- (a) the Commission has been given an undertaking, for the purposes of paragraph (2)(d), that an amalgamated organisation will fulfil an obligation; and
- (b) after giving the amalgamated organisation an opportunity to be heard, the Commission determines that the organisation has not complied with the undertaking;

the Commission may make any order it considers appropriate to require the organisation to comply with the undertaking.

#### **74 Assets and liabilities of de-registered organisation become assets and liabilities of amalgamated organisation**

- (1) On the amalgamation day, all assets and liabilities of a de-registered organisation cease to be assets and liabilities of that organisation and become assets and liabilities of the amalgamated organisation.
- (2) For all purposes and in all proceedings, an asset or liability of a de-registered organisation existing immediately before the amalgamation day is taken to have become an asset or liability of the amalgamated organisation on that day.

#### **75 Resignation from membership**

When the day on which the proposed amalgamation is to take effect is fixed, section 174 has effect in relation to resignation from membership of a proposed de-registering organisation as if the reference in subsection 174(2) to 2 weeks were a reference to one week or such lesser period as the Commission directs.

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**76 Effect of amalgamation on awards, orders and certified agreements**

On and from the amalgamation day:

- (a) an award, an order of the Commission or a certified agreement or old IR agreement that was, immediately before that day, binding on a proposed de-registering organisation and its members becomes, by force of this section, binding on the proposed amalgamated organisation and its members; and
- (b) the award, order or agreement has effect for all purposes (including the obligations of employers and organisations of employers) as if references in the award, order or agreement to a de-registered organisation included references to the amalgamated organisation.

**77 Effect of amalgamation on agreement under section 151**

- (1) Unless the scheme of a proposed amalgamation otherwise provides, an agreement in force under section 151 to which a de-registered organisation was a party continues in force on and from the amalgamation day as if references in the agreement to the de-registered organisation were references to the amalgamated organisation.
- (2) The Industrial Registrar must enter in the register kept under paragraph 13(1)(a) particulars of the effect of the amalgamation on the agreement.

**78 Instruments**

- (1) On and after the amalgamation day, an instrument to which this Part applies continues, subject to subsection (2), in full force and effect.
- (2) The instrument has effect, in relation to acts, omissions, transactions and matters done, entered into or occurring on or after that day as if a reference in the instrument to a de-registered organisation were a reference to the amalgamated organisation.

## **79 Pending proceedings**

Where, immediately before the amalgamation day, a proceeding to which this Part applies was pending in a court or before the Commission:

- (a) the amalgamated organisation is, on that day, substituted for each de-registered organisation as a party; and
- (b) the proceeding is to continue as if the amalgamated organisation were, and had always been, the de-registered organisation.

## **80 Division applies despite laws and agreements prohibiting transfer etc.**

- (1) This Division applies, and must be given effect to, despite anything in:
  - (a) the Workplace Relations Act or any other Commonwealth, State or Territory law; or
  - (b) any contract, deed, undertaking, agreement or other instrument.
- (2) Nothing done by this Division, and nothing done by a person because of, or for a purpose connected with or arising out of, this Division:
  - (a) is to be regarded as:
    - (i) placing an organisation or other person in breach of contract or confidence; or
    - (ii) otherwise making an organisation or other person guilty of a civil wrong; or
  - (b) is to be regarded as placing an organisation or other person in breach of:
    - (i) any Commonwealth, State or Territory law; or
    - (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or
  - (c) is taken to release any surety, wholly or in part, from all or any of the surety's obligations.
- (3) Without limiting subsection (1), where, but for this section, the consent of a person would be necessary in order to give effect to

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this Division in a particular respect, the consent is taken to have been given.

**81 Amalgamated organisation to take steps necessary to carry out amalgamation**

- (1) The amalgamated organisation must take such steps as are necessary to ensure that the amalgamation, and the operation of this Division in relation to the amalgamation, are fully effective.
- (2) The Federal Court may, on the application of an interested person, make such orders as it considers appropriate to ensure that subsection (1) is given effect to.

**82 Certificates in relation to land and interests in land**

Where:

- (a) land or an interest in land becomes, under this Division, land or an interest in land of the amalgamated organisation; and
- (b) a certificate that:
  - (i) is signed by an authorised person; and
  - (ii) identifies the land or interest, whether by reference to a map or otherwise; and
  - (iii) states that the land or interest has, under this Division, become land or an interest in land of the amalgamated organisation;

is lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated;

the officer with whom the certificate is lodged may:

- (c) deal with, and give effect to, the certificate as if it were a grant, conveyance, memorandum or instrument of transfer of the land (including all rights, title and interest in the land) or the interest in the land, as the case may be, to the amalgamated organisation that had been properly executed under the law of the State or Territory; and
- (d) register the matter in the same way as dealings in land or interests in land of that kind are registered.

### **83 Certificates in relation to charges**

Where:

- (a) the amalgamated organisation under an amalgamation becomes, under this Division, the holder of a charge; and
  - (b) a certificate that:
    - (i) is signed by an authorised person; and
    - (ii) identifies the charge; and
    - (iii) states that the amalgamated organisation has, under this Division, become the holder of the charge;
- is lodged with the Australian Securities and Investments Commission;

that Commission may:

- (c) register the matter in the same way as assignments of charges are registered; and
- (d) deal with, and give effect to, the certificate as if it were a notice of assignment of the charge that had been properly lodged with that Commission.

### **84 Certificates in relation to shares etc.**

Where:

- (a) the amalgamated organisation becomes, under this Division, the holder of a share, debenture or interest in a company; and
- (b) a certificate that:
  - (i) is signed by an authorised person; and
  - (ii) identifies the share, debenture or interest; and
  - (iii) states that the amalgamated organisation has become, under this Division, the holder of the share, debenture or interest;

is delivered to the company;

the company must take all steps necessary to register or record the matter in the same way as transfers of shares, debentures or interests in the company are registered or recorded.

### **85 Certificates in relation to other assets**

Where:

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- (a) an asset (other than an asset to which section 82, 83 or 84 applies) becomes, under this Division, an asset of the amalgamated organisation; and
- (b) a certificate that:
  - (i) is signed by an authorised person; and
  - (ii) identifies the asset; and
  - (iii) states that the asset has, under this Division, become an asset of the amalgamated organisation;is given to the person or authority who has, under Commonwealth, State or Territory law, responsibility for keeping a register in relation to assets of that kind; the person or authority may:
  - (c) register the matter in the same way as transactions in relation to assets of that kind are registered; and
  - (d) deal with, and give effect to, the certificate;as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind.

**86 Other matters**

The regulations may provide for any other matters relating to giving effect to an amalgamation.

**87 Federal Court may resolve difficulties**

- (1) Where any difficulty arises in relation to the application of this Division to a particular matter, the Federal Court may, on the application of an interested person, make such order as it considers proper to resolve the difficulty.
- (2) An order made under subsection (1) has effect despite anything contained in this Schedule, the Workplace Relations Act or in any other Commonwealth law or any State or Territory law.



## **Division 7—Validation**

### **88 Validation of certain acts done in good faith**

- (1) Subject to this section and to section 90, an act done in good faith for the purposes of a proposed or completed amalgamation by:
  - (a) an organisation or association concerned in the amalgamation; or
  - (b) the committee of management of such an organisation or association; or
  - (c) an officer of such an organisation or association;is valid despite any invalidity that may later be discovered in or in connection with the act.
- (2) For the purposes of this section:
  - (a) an act is treated as done in good faith until the contrary is proved; and
  - (b) a person who has purported to be a member of the committee of management, or an officer, is to be treated as having done so in good faith until the contrary is proved; and
  - (c) an invalidity in the making or altering of the scheme for the amalgamation is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of members of the committee of management or to a majority of the persons purporting to act as the committee of management; and
  - (d) knowledge of facts from which an invalidity arises is not of itself treated as knowledge that the invalidity exists.
- (3) This section applies:
  - (a) to an act whenever done (including an act done before the commencement of this section); and
  - (b) to an act done to or by an association before it became an organisation.
- (4) Nothing in this section affects:
  - (a) the operation of an order of the Federal Court made before the commencement of this section; or

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- (b) the operation of section 69, 81 or 87 or Part 2 of Chapter 11 (validation provisions for organisations).

**89 Validation of certain acts after 4 years**

- (1) Subject to subsection (2) and section 90, after the end of 4 years from the day an act is done for the purposes of a proposed or completed amalgamation by:
  - (a) an organisation or association concerned in the amalgamation; or
  - (b) the committee of management of such an organisation or association; or
  - (c) an officer of such an organisation or association;the act is taken to have complied with this Part and the rules of the organisation or association.
- (2) The operation of this section does not affect the validity or operation of an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar judicial act of the Federal Court or any other court made before the end of that 4 years.
- (3) This section applies:
  - (a) to an act whenever done (including an act done before the commencement of this section); or
  - (b) to an act done to or by an association before it became an organisation.

**90 Orders affecting application of section 88 or 89**

- (1) Where, on an application for an order under this section, the Federal Court is satisfied that the application of section 88 or 89 in relation to an act would do substantial injustice, having regard to the interests of:
  - (a) the organisation or association concerned; or
  - (b) members or creditors of the organisation or association concerned; or
  - (c) persons having dealings with the organisation or association concerned;the Court must, by order, declare accordingly.

- (2) Where a declaration is made, section 88 or 89, as the case requires, does not apply, and is taken never to have applied, in relation to the act specified in the declaration.
- (3) The Court may make an order under subsection (1) on the application of the organisation or association concerned, a member of the organisation or association concerned or any other person having a sufficient interest in relation to the organisation or association concerned.

**91 Federal Court may make orders in relation to consequences of invalidity**

- (1) An organisation or association, a member of an organisation or association or any other person having a sufficient interest in relation to an organisation or association may apply to the Federal Court for a determination of the question whether an invalidity has occurred in a proposed or completed amalgamation concerning the organisation or association.
- (2) On an application under subsection (1), the Court may make such determination as it considers proper.
- (3) Where, in a proceeding under subsection (1), the Court finds that an invalidity of the kind mentioned in that subsection has occurred, the Court may make such orders as it considers appropriate:
  - (a) to rectify the invalidity or cause it to be rectified; or
  - (b) to negative, modify or cause to be modified the consequences in law of the invalidity; or
  - (c) to validate any act, matter or thing that is made invalid by or because of the invalidity.
- (4) Where an order is made under subsection (3), the Court may give such ancillary or consequential directions as it considers appropriate.
- (5) The Court must not make an order under subsection (3) without satisfying itself that such an order would not do substantial injustice to:
  - (a) the organisation or association concerned; or
  - (b) any member or creditor of the organisation or association concerned; or

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- (c) any person having dealings with the organisation or association concerned.
- (6) This section applies:
  - (a) to an invalidity whenever occurring (including an invalidity occurring before the commencement of this section); and
  - (b) to an invalidity occurring in relation to an association before it became an organisation.

## **Part 3—Withdrawal from amalgamations**

### **Division 1—General**

#### **92 Object of Part**

The object of this Part is to provide for:

- (a) certain organisations that have taken part in amalgamations (either under this Schedule or the Workplace Relations Act as in force before the commencement of this Part) to be reconstituted and re-registered; and
- (b) branches of organisations of that kind to be formed into organisations and registered;

in a way that is fair to the members of the organisations concerned and the creditors of those organisations.

#### **93 Definitions etc.**

- (1) In this Part, unless the contrary intention appears:

***amalgamated organisation***, in relation to an amalgamation, means the organisation of which members of a de-registered organisation became members under paragraph 73(3)(d) but does not include any such organisation that was subsequently de-registered under Part 2.

***asset*** has the same meaning as in Part 2.

***authorised person***, in relation to a completed withdrawal from amalgamation, means a person authorised by the rules or the committee of management of the newly registered organisation.

***ballot*** means a ballot conducted under Division 2.

***charge*** has the same meaning as in Part 2.

***completed withdrawal from amalgamation*** means a proposed withdrawal from amalgamation that has taken effect.

***constituent member***, in relation to a constituent part of an amalgamated organisation, means:

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- (a) in the case of a separately identifiable constituent part—a member of the amalgamated organisation who is included in that part; or
- (b) in any other case—a member of the amalgamated organisation who would be eligible for membership of the constituent part if:
  - (i) the constituent part; or
  - (ii) the organisation of which the constituent part was a branch;as the case requires, were still registered as an organisation with the same rules as it had when it was de-registered under Part 2.

***constituent part***, in relation to an amalgamated organisation, means:

- (a) a separately identifiable constituent part; or
- (b) a part of the membership of the amalgamated organisation that would have been eligible for membership of:
  - (i) an organisation de-registered under Part 4 in connection with the formation of the amalgamated organisation; or
  - (ii) a State or Territory branch of such a de-registered organisation;if the de-registration had not occurred.

***debenture*** has the same meaning as in Part 2.

***holder***, in relation to a charge, has the same meaning as in Part 2.

***instrument*** has the same meaning as in Part 2.

***instrument to which this Part applies***, in relation to a completed withdrawal from amalgamation, means an instrument that immediately before the withdrawal day is an instrument:

- (a) to which the amalgamated organisation from which a constituent part has withdrawn to form a newly registered organisation is a party; or
- (b) that was given to, by, or in favour of, the amalgamated organisation; or
- (c) in which a reference is made to the amalgamated organisation; or

- (d) under which any right or liability accrues or may accrue to the amalgamated organisation in relation to the constituent part of the organisation and its members.

*interest* has the same meaning as in Part 2.

*invalidity* has the same meaning as in Part 2.

*irregularity* includes a breach of the rules of an organisation, but in Division 4 does not include an irregularity in relation to a ballot.

*liability* has the same meaning as in Part 2.

*newly registered organisation* means an organisation registered under section 110.

*proceeding to which this Part applies*, in relation to a completed withdrawal from amalgamation, means a proceeding to which an amalgamated organisation was a party immediately before the withdrawal day.

*proposed withdrawal from amalgamation* means the proposed carrying out of arrangements in relation to an amalgamated organisation under which a separately identifiable constituent part of the organisation is to withdraw from the organisation.

*separately identifiable constituent part*, in relation to an amalgamated organisation, means:

- (a) if an organisation de-registered under Part 2 in connection with the formation of the amalgamated organisation remains separately identifiable under the rules of the amalgamated organisation as a branch, division or part of that organisation—that branch, division or part; or
- (b) if a State or Territory branch of such a de-registered organisation under its rules as in force immediately before its de-registration remains separately identifiable under the rules of the amalgamated organisation as a branch, division or part of that organisation—that branch, division or part.

*withdrawal day*, in relation to a completed withdrawal from amalgamation, means the day fixed under paragraph 109(1)(a) in relation to the withdrawal from amalgamation.

- (2) For the purposes of this Part, an organisation is taken to have been de-registered under Part 2 in connection with the formation of an

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amalgamated organisation if the de-registration occurred in connection with the formation of:

- (a) the amalgamated organisation; or
- (b) another organisation that was subsequently de-registered under Part 2 in connection with the formation of:
  - (i) the amalgamated organisation; or
  - (ii) an organisation that, through one or more previous applications of this subsection, is taken to have been de-registered under Part 2 in connection with the formation of the amalgamated organisation.



## **Division 2—Ballots for withdrawal from amalgamated organisations**

### **94 Applications to the Federal Court for ballots**

- (1) An application may be made to the Federal Court for a secret postal ballot to be held, to decide whether a constituent part of an amalgamated organisation should withdraw from the organisation, if:
  - (a) the constituent part became part of the organisation as a result of an amalgamation under:
    - (i) Division 7 of Part IX of the Workplace Relations Act (as in force before the commencement of this Part) after 1 February 1991; or
    - (ii) Part 2 of this Chapter; and
  - (b) the amalgamation occurred after 31 December 1996; and
  - (c) the application is made at least 2 years, but no more than 5 years, after the amalgamation occurred.
- (2) However, an application cannot be made if:
  - (a) during the last 12 months, the Court has rejected an application for a ballot to be held in relation to the constituent part of the organisation; or
  - (b) a ballot was held that rejected the withdrawal of the constituent part.
- (3) The application may be made by:
  - (a) the prescribed number of constituent members; or
  - (b) a committee of management elected entirely or substantially by the constituent members, whether by a direct voting system or a collegiate electoral system; or
  - (c) if the application relates to a separately identifiable constituent part—the committee of management of that part.
- (4) The application must be in the prescribed form and must contain such information as is prescribed.
- (5) A constituent member of an amalgamated organisation who is not a financial member is taken not to be a constituent member for the purposes of subsection (3).

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**95 Outline of proposed withdrawal**

- (1) The application must be accompanied by a written outline of the proposal for the constituent part to withdraw from the amalgamated organisation. Subject to subsection (2), the outline must:
  - (a) provide, in no more than 3,000 words, sufficient information on the proposal to enable the constituent members to make informed decisions in relation to the proposed withdrawal; and
  - (b) address such matters as are prescribed.
- (2) The outline may, if the Federal Court allows, consist of more than 3,000 words.
- (3) The outline must be a fair and accurate representation of the proposed withdrawal and must address any matters prescribed for the purposes of paragraph (1)(b) in a fair and accurate manner.
- (4) If the Federal Court is not satisfied that the outline complies with subsection (3), the Court must order the making of such amendments to the outline as it considers are needed for the outline to comply with that subsection.

**96 Filing the “yes” case**

- (1) The applicant or applicants may file with the Federal Court a written statement of no more than 2,000 words in support of the proposal for the constituent part to withdraw from the amalgamated organisation.
- (2) The statement must either:
  - (a) accompany the application; or
  - (b) be filed within such later time as the Court allows.
- (3) The Court may order that the statement be amended, in accordance with the order, to correct factual errors or otherwise to ensure that it complies with this Schedule.

### **97 Filing the “no” case**

- (1) The amalgamated organisation may file with the Federal Court a written statement of no more than 2,000 words in opposition to the proposal for the constituent part to withdraw from the organisation.
- (2) The statement must be filed either:
  - (a) not later than 7 days before the day set down for the hearing of the application in question by the Court; or
  - (b) within such later time as the Court allows.
- (3) The Court may order that the statement be amended, in accordance with the order, to correct factual errors or otherwise to ensure that it complies with this Schedule.

### **98 Provisions relating to outlines and statements of “yes” and “no” cases**

- (1) An outline under section 95 or a statement under section 96 or 97 may, if the Federal Court allows, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.
- (2) The Court may allow an outline under section 95, or a statement under section 96 or 97, to be amended by whoever filed the outline or statement with the Court.

### **99 Notifying of applications for ballots**

- (1) If an application is made under section 94, the Registrar of the Federal Court must immediately notify the AEC of the application.
- (2) On being notified of the application, the AEC must immediately take such action as it considers necessary or desirable to enable it to conduct, as quickly as possible, any ballot that may be required as a result of the application.

### **100 Orders for ballots**

- (1) The Federal Court must order that a vote of the constituent members be taken by secret postal ballot, to decide whether the constituent part of the amalgamated organisation should withdraw from the organisation, if the Court is satisfied that:

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- (a) the application for the ballot is validly made under section 94; and
  - (b) the outline under section 95 relating to the application:
    - (i) is a fair and accurate representation of the proposal for withdrawal from the organisation; and
    - (ii) addresses any matters prescribed for the purposes of paragraph 95(1)(b) in a fair and accurate manner; and
  - (c) the proposal for withdrawal from the organisation complies with any requirements specified in the regulations.
- (2) In considering whether to order that a ballot be held, the Court may hear from:
  - (a) an applicant for the ballot; and
  - (b) the amalgamated organisation; and
  - (c) a creditor of the amalgamated organisation; and
  - (d) any other person who would be affected by the withdrawal of the constituent part from the amalgamated organisation.
- (3) If the Court orders that a ballot be held, it may make such orders as it thinks fit in relation to the conduct of the ballot.

**101 Financial members only eligible to vote**

A constituent member of an amalgamated organisation is not eligible to vote in a ballot under this Division unless the person:

- (a) is a financial member of the organisation; or
- (b) is in a class of members prescribed for the purposes of this section.

**102 Conduct of ballots**

- (1) All ballots are to be conducted by the AEC in accordance with the regulations. The expenses of conducting such a ballot are to be borne by the Commonwealth.
- (2) The ballot paper sent to the constituent members of a constituent part of an amalgamated organisation in connection with a proposal for the constituent part to withdraw from the amalgamated organisation must be accompanied by:
  - (a) a copy of the outline under section 95 relating to the proposed withdrawal; and

- (b) if there is a statement under section 96 in support of the proposed withdrawal—a copy of that statement; and
  - (c) if there is a statement under section 97 in opposition to the proposed withdrawal—a copy of that statement; and
  - (d) the declaration envelope and other envelope required for the purposes of the postal ballot.
- (3) In a ballot conducted under this section, each completed ballot paper must be returned to the AEC as follows:
- (a) the ballot paper must be in the declaration envelope provided to the voter with the ballot paper;
  - (b) the declaration envelope must be in another envelope that is in the form prescribed by the regulations.

### **103 Providing information etc. to electoral officials**

- (1) An electoral official may, if:
- (a) it is reasonably necessary for the purposes of a ballot that may be, or is, required to be held; and
  - (b) the official is authorised by the AEC under this section for the purposes of the ballot;
- require (by written notice) an officer or employee of the amalgamated organisation concerned or of a branch of the organisation:
- (c) to give to the official, within the period (of not less than 7 days after the notice is given) and in the manner specified in the notice, any information within the knowledge or in the possession of the person; and
  - (d) to produce or make available to the official, at a reasonable time (being a time not less than 7 days after the notice is given) and place specified in the notice, any documents in the custody or under the control of the person, or to which he or she has access.
- (2) An officer or employee of an organisation or branch of an organisation commits an offence if he or she fails to comply with a requirement made under subsection (1).
- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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- (4) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

Maximum penalty: 30 penalty units.

- (5) A person is not excused from giving information or producing or making available a document under this section on the ground that the information or the production or making available of the document might tend to incriminate the person or expose the person to a penalty.

- (6) However:

- (a) giving the information or producing or making available the document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing or making available the document;

is not admissible in evidence against the person in criminal proceedings or proceedings that may expose the person to a penalty, other than proceedings under, or arising out of, subsection 104(3).

- (7) If any information or document specified in a notice under subsection (1) is kept in electronic form, the electoral official may require it to be made available in that form.

**104 Declaration by secretary etc. of organisation**

- (1) If a requirement is made under subsection 103(1) in relation to the register, or part of the register, kept by an organisation under section 230, the secretary or other prescribed officer of the organisation must make a declaration, in accordance with subsection (2), that the register has been maintained as required by subsection 230(2).

Note: This subsection is a civil penalty provision (see section 305).

- (2) The declaration must be:

- (a) signed by the person making it; and

- (b) given to the returning officer, and lodged in the Industrial Registry, as soon as practicable but no later than the day before the first day of voting in the relevant election.
- (3) A person must not, in a declaration for the purposes of subsection (1), make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This subsection is a civil penalty provision (see section 305).

## **105 Offences in relation to ballots**

### *Interference with ballot papers*

- (1) A person commits an offence in relation to a ballot if the person:
  - (a) impersonates another person with the intention of:
    - (i) securing a ballot paper to which the impersonator is not entitled; or
    - (ii) casting a vote; or
  - (b) does an act that results in a ballot paper or envelope being destroyed, defaced, altered, taken or otherwise interfered with; or
  - (c) fraudulently puts a ballot paper or other paper:
    - (i) into a ballot box or other ballot receptacle; or
    - (ii) into the post; or
  - (d) delivers a ballot paper or other paper to a person other than a person receiving ballot papers for the purposes of the ballot; or
  - (e) records a vote that the person is not entitled to record; or
  - (f) records more than one vote; or
  - (g) forges a ballot paper or envelope, or utters a ballot paper or envelope that the person knows to be forged; or
  - (h) provides a ballot paper without authority; or
  - (i) obtains a ballot paper which the person is not entitled to obtain; or
  - (j) has possession of a ballot paper which the person is not entitled to possess; or
  - (k) does an act that results in a ballot box or other ballot receptacle being destroyed, taken, opened or otherwise interfered with.

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Maximum penalty: 30 penalty units.

*Hindering the ballot, threats and bribes etc.*

- (2) A person commits an offence in relation to a ballot if the person:
- (a) hinders or obstructs the taking of the ballot; or
  - (b) uses any form of intimidation or inducement to prevent from voting, or to influence the vote of, a person entitled to vote at the ballot; or
  - (c) threatens, offers or suggests, or uses, causes or inflicts any violence, injury, punishment, damage, loss or disadvantage with the intention of influencing or affecting:
    - (i) any vote or omission to vote; or
    - (ii) any support of, or opposition to, voting in a particular manner; or
    - (iii) any promise of any vote, omission, support or opposition; or
  - (d) gives, or promises or offers to give, any property or benefit of any kind with the intention of influencing or affecting anything referred to in subparagraph (c)(i), (ii) or (iii); or
  - (e) asks for or obtains, or offers or agrees to ask for or obtain, any property or benefit of any kind (whether for that person or another person), on the understanding that anything referred to in subparagraph (c)(i), (ii) or (iii) will be influenced or affected in any way; or
  - (f) counsels or advises a person entitled to vote to refrain from voting.

Maximum penalty: 30 penalty units.

*Secrecy of vote*

- (3) A person (the **relevant person**) commits an offence in relation to a ballot if:
- (a) the relevant person requests, requires or induces another person:
    - (i) to show a ballot paper to the relevant person; or
    - (ii) to permit the relevant person to see a ballot paper;in such a manner that the relevant person can see the vote while the ballot paper is being marked or after it has been marked; or



- (b) in the case where the relevant person is a person performing duties for the purposes of the ballot—the relevant person shows another person, or permits another person to have access to, a ballot paper used in the ballot, otherwise than in the performance of the duties.

Maximum penalty: 30 penalty units.

### **106 Certificate showing particulars of the ballot**

- (1) Within 14 days after the closing day of a ballot, the electoral official conducting the ballot must prepare, date and sign a certificate showing, in relation to the ballot:
  - (a) the total number of persons on the roll of voters; and
  - (b) the total number of ballot papers issued; and
  - (c) the total number of ballot papers received by the electoral official; and
  - (d) the total number of votes in favour of the question set out on the ballot paper; and
  - (e) the total number of votes not in favour of the question set out on the ballot paper; and
  - (f) the total number of informal ballot papers.
- (2) Immediately after signing a certificate referred to in subsection (1), the electoral official must give a copy of the certificate to:
  - (a) the Federal Court; and
  - (b) the Industrial Registrar; and
  - (c) if the applicant was a person mentioned in paragraph 94(3)(b) or (c)—each applicant; and
  - (d) the amalgamated organisation from which the constituent part withdrew or sought to withdraw.
- (3) Immediately after signing a certificate referred to in subsection (1), the electoral official must make a copy of the certificate available in any way that it considers appropriate to each applicant under paragraph 94(3)(a).

### **107 Post-ballot report by AEC**

- (1) After the completion of the ballot, the AEC must give a report on the conduct of the ballot to:

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- (a) the Federal Court; and
  - (b) the Industrial Registrar; and
  - (c) if the applicant was a person mentioned in paragraph 94(3)(b) or (c)—each applicant; and
  - (d) the amalgamated organisation from which the constituent part withdrew or sought to withdraw.
- (2) After the completion of the ballot, the AEC must make a report on the conduct of the ballot available in any way that it considers appropriate to each applicant under paragraph 94(3)(a).
- (3) The report must include details of the prescribed matters.
- (4) If the AEC is of the opinion that the register of members, or the part of the register, made available to the AEC for the purposes of the ballot, contained at the time of the ballot:
  - (a) an unduly large proportion of members' addresses that were not current; or
  - (b) an unduly large proportion of members' addresses that were workplace addresses;this fact must be included in the report.

**108 Inquiries into irregularities**

- (1) Not later than 30 days after the result of a ballot under this Part is declared, application may be made to the Federal Court, as prescribed, for an inquiry by the Court into alleged irregularities in relation to the ballot.
- (2) If the Court finds that there has been an irregularity that may affect, or may have affected, the result of the ballot, the Court may:
  - (a) if the ballot has not been completed—order that a step in relation to the ballot be taken again; or
  - (b) in any other case—order that a fresh ballot be conducted in place of the ballot in which the irregularity happened;and may make such further orders as it considers necessary or desirable.
- (3) The regulations may make provision with respect to the procedure for inquiries by the Court into alleged irregularities in relation to ballots under this Part, and for matters relating to, or arising out of, inquiries.

## **Division 3—Giving effect to ballots**

### **109 Determining the day of withdrawal**

- (1) If more than 50% of the formal votes cast in a ballot are in favour of a constituent part of an amalgamated organisation withdrawing from the organisation, the Federal Court must, on application:
  - (a) determine the day on which the withdrawal is to take effect; and
  - (b) make such orders as are necessary to apportion the assets and liabilities of the amalgamated organisation between the amalgamated organisation and the constituent part; and
  - (c) make such other orders as it thinks fit in connection with giving effect to the withdrawal.
- (2) In making an order under paragraph (1)(b), the Court must have regard to:
  - (a) the assets and liabilities of the constituent part before it, or the organisation of which it was a State or Territory branch, was de-registered under Part 2 in connection with the formation of the amalgamated organisation; and
  - (b) any change in the net value of those assets or liabilities that has occurred since the amalgamation; and
  - (c) the interests of the creditors of the amalgamated organisation.
- (3) An application to the Court under subsection (1) may be made by:
  - (a) the prescribed number of constituent members; or
  - (b) a person authorised to make the application by the prescribed number of constituent members; or
  - (c) a committee of management elected entirely or substantially by the constituent members, whether by a direct voting system or a collegiate electoral system; or
  - (d) if the application relates to a separately identifiable constituent part—the committee of management of that part; or
  - (e) a person who is:
    - (i) either a constituent member or a member of a committee of management referred to in paragraph (c) or (d); and

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- (ii) authorised to make the application by a committee of management referred to in paragraph (c) or (d).
- (4) A constituent member of an amalgamated organisation who is not a financial member is taken not to be a constituent member for the purposes of subsection (3).
- (5) The application must be in the prescribed form and must contain such information as is prescribed.
- (6) The regulations may prescribe the manner in which an authorisation for the purposes of paragraph (3)(b) and subparagraph (e)(ii) must be made.

**110 Registration of constituent part**

The Industrial Registrar must, with effect from the day determined under paragraph 109(1)(a):

- (a) register the constituent part as an organisation in the register kept under paragraph 13(1)(a); and
- (b) enter in the register such other particulars in relation to the organisation as are prescribed.

**111 Choice of organisation following withdrawal of separately identifiable constituent part**

- (1) This section applies in the case of a withdrawal from amalgamation under this Part by a separately identifiable constituent part of an amalgamated organisation.
- (2) As soon as practicable after the constituent part is registered as an organisation under section 110, the amalgamated organisation must send a written statement in accordance with subsection (3) to each person who, immediately before that registration, was a member of the amalgamated organisation attached to the constituent part.
- (3) The statement must:
  - (a) inform the person of the withdrawal from amalgamation of the constituent part; and
  - (b) invite the person to give written notice, within a period of 28 days after being sent the statement (the *notice period*), to the amalgamated organisation or to the newly registered organisation that:

- (i) the person wants to remain a member of the amalgamated organisation; or
  - (ii) the person wants to become a member of the newly registered organisation; and
  - (c) explain the effect of responding, or failing to respond, to the invitation.
- (4) As soon as practicable after the amalgamated organisation receives a notice under paragraph (3)(b), it must notify the newly registered organisation of the receipt.
- (5) As soon as practicable after the newly registered organisation receives a notice under paragraph (3)(b), it must notify the amalgamated organisation of the receipt.
- (6) If a person referred to in subsection (2) gives written notice in accordance with paragraph (3)(b), within the notice period, that he or she wants to become a member of the newly registered organisation, he or she:
  - (a) ceases, by force of this subsection, to be a member of the amalgamated organisation with effect from the day on which the notice is received by the amalgamated organisation or the newly registered organisation (as the case may be); and
  - (b) becomes, by force of this subsection and without payment of entrance fee, a member of the newly registered organisation with effect from the day after the day referred to in paragraph (a).
- (7) If a person referred to in subsection (2):
  - (a) gives written notice in accordance with paragraph (3)(b) within the notice period that he or she wants to remain a member of the amalgamated organisation; or
  - (b) fails to give written notice in accordance with paragraph (3)(b) within the notice period;he or she remains a member of the amalgamated organisation.
- (8) A person who ceases to be a member of the amalgamated organisation because of the operation of subsection (6):
  - (a) is not liable to make any payment because the person gave no notice, or insufficient notice, of ceasing to be such a member under the rules of the organisation; and

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- (b) otherwise, remains liable for such payments as are due in accordance with those rules.
- (9) Notwithstanding paragraph (7)(b), if a person to whom that paragraph would apply, at any time before the day upon which the constituent part is registered as an organisation under section 110, gives notice in writing to the amalgamated organisation or to the applicant for a ballot under section 94 that he or she wishes to become a member of the newly registered organisation upon its registration under section 110, that person:
  - (a) ceases, by force of this subsection, to be a member of the amalgamated organisation with effect from the day after the end of the notice period; and
  - (b) becomes, by force of this subsection and without payment of entrance fee, a member of the newly registered organisation with effect from the day after the day referred to in paragraph (a).
- (10) As soon as practicable after the end of the notice period, the amalgamated organisation must notify the newly registered organisation of any notices under subsection (9) it has received.
- (11) As soon as practicable after the end of the notice period, the newly registered organisation must notify the amalgamated organisation of any notices under subsection (9) the applicant under section 94 has received.

### **112 Members of amalgamated organisation may join newly registered organisation**

A person who is a member of the amalgamated organisation from which the constituent part withdrew to form a newly registered organisation may become a member of the newly registered organisation without payment of entrance fee if the person is eligible for membership of it.

### **113 Orders of the Commission, awards etc.**

- (1) This section applies to an order of the Commission, an award, a certified agreement or an old IR agreement that was, immediately before the day the registration takes effect, binding on the amalgamated organisation in relation to the constituent part of the organisation and its members.

- (2) On and from the day the registration takes effect, the order, award, certified agreement or old IR agreement:
  - (a) becomes binding on the newly registered organisation and its members; and
  - (b) has effect for all purposes (including the obligations of employers and organisations of employers) as if references in the order, award or agreement to the amalgamated organisation included references to the newly registered organisation.

#### **114 Effect of withdrawal on agreement under section 151**

- (1) An agreement:
  - (a) in force under section 151 immediately before the day on which registration of a newly registered organisation takes effect; and
  - (b) to which the amalgamated organisation from which a constituent part has withdrawn to form the newly registered organisation is a party;continues in force on and from that day as if references in the agreement to the amalgamated organisation included a reference to the newly registered organisation.
- (2) The Industrial Registrar must enter in the register kept under paragraph 13(1)(a) particulars of the effect of the withdrawal from amalgamation on the agreement.

#### **115 Instruments**

- (1) On and after the withdrawal day, an instrument to which this Part applies continues, subject to subsection (2), in full force and effect.
- (2) Subject to section 109, the instrument has effect, in relation to acts, omissions, transactions and matters done, entered into or occurring on or after that day as if a reference in the instrument to the amalgamated organisation from which a constituent part has withdrawn to form a newly registered organisation included a reference to the newly registered organisation.

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**116 Pending proceedings**

If an amalgamated organisation from which a constituent part has withdrawn to form a newly registered organisation was, immediately before the withdrawal day, a party to a proceeding that:

- (a) was pending at that day; and
- (b) concerns, wholly or in part, the interests of the constituent members of the constituent part;

then, on and after that day, the newly registered organisation:

- (c) in the case of proceedings that concern wholly the interests of the constituent members—is substituted for the amalgamated organisation in those proceedings and has the same rights and obligations in the proceedings as the amalgamated organisation had; and
- (d) in the case of proceedings that concern in part the interests of the constituent members—becomes a party to the proceedings and has the same rights and obligations in the proceedings as the amalgamated organisation has.

**117 Division applies despite laws and agreements prohibiting transfer etc.**

- (1) This Division applies, and must be given effect to, despite anything in:
  - (a) the Workplace Relations Act or any other Commonwealth, State or Territory law; or
  - (b) any contract, deed, undertaking, agreement or other instrument.
- (2) Nothing done by this Division, and nothing done by a person because of, or for a purpose connected with or arising out of, this Division:
  - (a) is to be regarded as:
    - (i) placing an organisation or other person in breach of contract or confidence; or
    - (ii) otherwise making an organisation or other person guilty of a civil wrong; or
  - (b) is to be regarded as placing an organisation or other person in breach of:
    - (i) any Commonwealth, State or Territory law; or



- (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or
  - (c) is taken to release any surety, wholly or in part, from all or any of the surety's obligations.
- (3) Without limiting subsection (1), if, apart from this section, the consent of a person would be necessary in order to give effect to this Division in a particular respect, the consent is taken to have been given.

### **118 Amalgamated organisation, constituent part and newly registered organisation to take necessary steps**

- (1) The following must take such steps as are necessary to ensure that the withdrawal from amalgamation, and the operation of this Division in relation to the withdrawal from amalgamation, are fully effective:
  - (a) the amalgamated organisation concerned;
  - (b) the constituent part concerned;
  - (c) the newly registered organisation concerned.
- (2) The Federal Court may, on the application of an interested person, make such orders as it considers appropriate to ensure that subsection (1) is given effect to.

### **119 Certificates in relation to land and interests in land**

Where:

- (a) land or an interest in land becomes, under this Division, land or an interest in land of a newly registered organisation; and
- (b) a certificate that:
  - (i) is signed by an authorised person; and
  - (ii) identifies the land or interest, whether by reference to a map or otherwise; and
  - (iii) states that the land or interest has, under this Division, become land or an interest in land of the newly registered organisation;

is lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated;

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the officer with whom the certificate is lodged may:

- (c) register the matter in the same way as dealings in land or interests in land of that kind are registered; and
- (d) deal with, and give effect to, the certificate as if it were a grant, conveyance, memorandum or instrument of transfer of the land (including all rights, title and interest in the land) or the interest in the land, as the case may be, to the newly registered organisation that had been properly executed under the law of the State or Territory.

**120 Certificates in relation to charges**

Where:

- (a) a newly registered organisation becomes, under this Division, the holder of a charge; and
- (b) a certificate that:
  - (i) is signed by an authorised person; and
  - (ii) identifies the charge; and
  - (iii) states that the newly registered organisation has, under this Division, become the holder of the charge;is lodged with the Australian Securities and Investments Commission;

that Commission may:

- (c) register the matter in the same way as assignments of charges are registered; and
- (d) deal with, and give effect to, the certificate as if it were a notice of assignment of the charge that had been properly lodged with that Commission.

**121 Certificates in relation to shares etc.**

Where:

- (a) a newly registered organisation becomes, under this Division, the holder of a share, debenture or interest in a company; and
- (b) a certificate that:
  - (i) is signed by an authorised person; and
  - (ii) identifies the share, debenture or interest; and
  - (iii) states that the newly registered organisation has become, under this Division, the holder of the share, debenture or interest;

is delivered to the company;  
the company must take all steps necessary to register or record the matter in the same way as transfers of shares, debentures or interests in the company are registered or recorded.

## **122 Certificates in relation to other assets**

Where:

- (a) an asset (other than an asset to which section 119, 120 or 121 applies) becomes, under this Division, an asset of a newly registered organisation; and
  - (b) a certificate that:
    - (i) is signed by an authorised person; and
    - (ii) identifies the asset; and
    - (iii) states that the asset has, under this Division, become an asset of the newly registered organisation;
- is given to the person or authority who has, under Commonwealth, State or Territory law, responsibility for keeping a register in relation to assets of that kind;

the person or authority may:

- (c) register the matter in the same way as transactions in relation to assets of that kind are registered; and
- (d) deal with, and give effect to, the certificate as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind.

## **123 Holding office after withdrawal**

- (1) The rules of a newly registered organisation may provide that a person who:
  - (a) was elected to office (the *constituent office*) in the constituent part that withdrew from an amalgamated organisation to form the new registered organisation; and
  - (b) held that office immediately before withdrawal day;holds the equivalent office in the newly registered organisation as if he or she were elected under the rules of the newly registered organisation.
- (2) However, the rules may not permit a person to hold office after the later of:

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- (a) the day that would have been the person's last day of term in the constituent office if the withdrawal had not occurred; and
- (b) the first anniversary of the withdrawal day.

**124 Other matters**

The regulations may provide for any other matters relating to giving effect to the withdrawal of constituent parts from amalgamated organisations.

**125 Federal Court may resolve difficulties**

- (1) If any difficulty arises in relation to the application of this Part to a particular matter, the Federal Court may, on the application of an interested person, make such order as it thinks proper to resolve the difficulty.
- (2) An order made under subsection (1) has effect despite any Commonwealth, State or Territory law.

## **Division 4—Validation**

### **126 Validation of certain acts done in good faith**

- (1) Subject to this section and to section 128, an act done in good faith for the purposes of a proposed or completed withdrawal from amalgamation by:
  - (a) the amalgamated organisation concerned; or
  - (b) the committee of management, or an officer, of that organisation; or
  - (c) the constituent part concerned; or
  - (d) the committee of management, or an officer, of that part; or
  - (e) the newly registered organisation concerned; or
  - (f) the committee of management, or an officer, of that organisation;is valid despite any invalidity that may later be discovered in or in connection with the act.
- (2) For the purposes of this section:
  - (a) an act is treated as done in good faith until the contrary is proved; and
  - (b) a person who has purported to be a member of the committee of management, or an officer, is to be treated as having done so in good faith until the contrary is proved; and
  - (c) an invalidity in the making or altering of the outline of the proposed withdrawal from amalgamation is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of members of the committee of management or to a majority of the persons purporting to act as the committee of management; and
  - (d) knowledge of facts from which an invalidity arises is not of itself treated as knowledge that the invalidity exists.
- (3) This section applies to an act whenever done (including an act done before the commencement of this section).
- (4) Nothing in this section affects:

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- (a) the operation of an order of the Federal Court made before the commencement of this section; or
- (b) the operation of section 108, 118 or 125 or Part 2 of Chapter 11 (validation provisions for organisations).

**127 Validation of certain acts after 4 years**

- (1) Subject to subsection (2) and section 128, after the end of 4 years from the day an act is done for the purposes of a proposed or completed withdrawal from amalgamation by:
  - (a) the amalgamated organisation concerned; or
  - (b) the committee of management, or an officer, of that organisation; or
  - (c) the constituent part concerned; or
  - (d) the committee of management, or an officer, of that part; or
  - (e) the newly registered organisation concerned; or
  - (f) the committee of management, or an officer, of that organisation;the act is taken to have complied with this Part and the rules of the organisation.
- (2) The operation of this section does not affect the validity or operation of an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar judicial act of the Federal Court or any other court made before the end of that 4 years.
- (3) This section applies to an act whenever done (including an act done before the commencement of this section).

**128 Orders affecting application of section 126 or 127**

- (1) Where, on an application for an order under this section, the Federal Court is satisfied that the application of section 126 or 127 in relation to an act would do substantial injustice, having regard to the interests of:
  - (a) the amalgamated organisation from which a constituent part withdrew to form a newly registered organisation, or the constituent part; or
  - (b) members or creditors of the amalgamated organisation or the constituent part; or

- (c) persons having dealings with the amalgamated organisation or the constituent part; or
  - (d) the newly registered organisation; or
  - (e) members or creditors of the newly registered organisation; or
  - (f) persons having dealings with the newly registered organisation;
- the Court must, by order, declare accordingly.
- (2) Where a declaration is made, section 126 or 127, as the case requires, does not apply, and is taken never to have applied, in relation to the act specified in the declaration.
  - (3) The Court may make an order under subsection (1) on the application of:
    - (a) the amalgamated organisation; or
    - (b) the constituent part; or
    - (c) the newly registered organisation; or
    - (d) a member of, or any other person having a sufficient interest in relation to, a body referred to in paragraph (a), (b) or (c).

### **129 Federal Court may make orders in relation to consequences of invalidity**

- (1) Any of the following may apply to the Federal Court for a determination of the question whether an invalidity has occurred in a proposed withdrawal from amalgamation or completed withdrawal from amalgamation:
  - (a) the amalgamated organisation concerned;
  - (b) the constituent part concerned;
  - (c) the newly registered organisation concerned;
  - (d) a member of, or any other person having a sufficient interest in relation to, a body referred to in paragraph (a), (b) or (c).
- (2) On an application under subsection (1), the Court may make such determination as it considers proper.
- (3) Where, in a proceeding under subsection (1), the Court finds that an invalidity of the kind mentioned in that subsection has occurred, the Court may make such orders as it considers appropriate:
  - (a) to rectify the invalidity or cause it to be rectified; or

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- (b) to negative, modify or cause to be modified the consequences in law of the invalidity; or
  - (c) to validate any act, matter or thing that is made invalid by or because of the invalidity.
- (4) Where an order is made under subsection (3), the Court may give such ancillary or consequential directions as it considers appropriate.
- (5) The Court must not make an order under subsection (3) without satisfying itself that such an order would not do substantial injustice to:
  - (a) the amalgamated organisation; or
  - (b) a member or creditor of the amalgamated organisation; or
  - (c) the constituent part; or
  - (d) a constituent member of the constituent part; or
  - (e) the newly registered organisation; or
  - (f) a member or creditor of the newly registered organisation; or
  - (g) any other person having dealings with the amalgamated organisation, the constituent part or the newly registered organisation.
- (6) This section applies to an invalidity whenever occurring (including an invalidity occurring before the commencement of this section).



## **Division 5—Miscellaneous**

### **130 Certain actions etc. not to constitute breach of rules of amalgamated organisation**

- (1) Neither of the following constitutes a breach of the rules of an amalgamated organisation:
  - (a) an act done, or omitted to be done, under or for the purposes of this Part, or regulations made for the purposes of this Part;
  - (b) an act done, or omitted to be done, in connection with the proposal of, or preparation for, an act or omission of a kind referred to in paragraph (a).
- (2) The following are examples of acts and omissions to which subsection (1) applies:
  - (a) making an application under section 94;
  - (b) supporting, or supporting the making of, an application under section 94;
  - (c) participating in, or encouraging a person to participate in, a ballot under Division 2;
  - (d) not participating in a ballot under Division 2;
  - (e) encouraging a person not to participate in a ballot under Division 2;
  - (f) casting a vote in a particular way in a ballot under Division 2;
  - (g) encouraging a person to cast a vote in a particular way in a ballot under Division 2;
  - (h) complying with an order or requirement made under this Part or regulations made for the purposes of this Part; or
  - (i) encouraging a person to resign his or her membership of the amalgamated organisation from which the constituent part withdrew to form the newly registered organisation so that the person can become a member of the newly registered organisation.

### **131 Amalgamated organisation not to penalise members etc.**

- (1) The amalgamated organisation, or an officer or member of the organisation, must not impose, or threaten to impose, a penalty, forfeiture or disability of any kind on:

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- (a) a member or officer of the organisation; or
    - (b) a branch, or other part, of the organisation;because the member, officer, branch or part concerned does, or proposes to do, an act or omission referred to in section 130.
  - (2) The Federal Court may, if the Court considers it appropriate in all the circumstances, make one or more of the following orders in respect of conduct that contravenes subsection (1):
    - (a) an order imposing on a person whose conduct contravenes that subsection a penalty of not more than:
      - (i) in the case of a body corporate—100 penalty units; or
      - (ii) in any other case—20 penalty units;
    - (b) an order requiring the person not to carry out a threat made by the person, or not to make any further threat;
    - (c) injunctions (including interim injunctions), and any other orders, that the Court considers necessary to stop the conduct or remedy its effects;
    - (d) any other consequential orders.
  - (3) An application for an order under subsection (2) may be made by:
    - (a) a person against whom the conduct is being, has been, or is threatened to be, taken; or
    - (b) any other person prescribed by the regulations.
  - (4) For the purposes of this section, action done by one of the following bodies or persons is taken to have been done by an amalgamated organisation:
    - (a) the committee of management of the amalgamated organisation;
    - (b) an officer or agent of the amalgamated organisation acting in that capacity;
    - (c) a member or group of members of the amalgamated organisation acting under the rules of the organisation;
    - (d) a member of the amalgamated organisation, who performs the function of dealing with an employer on behalf of other members of the organisation, acting in that capacity.
  - (5) Paragraphs (4)(c) and (d) do not apply if:
    - (a) a committee of management of the amalgamated organisation; or
    - (b) a person authorised by the committee; or
-

(c) an officer of the amalgamated organisation;  
has taken reasonable steps to prevent the action.

(6) In this section:

***amalgamated organisation*** includes a branch of an amalgamated organisation.

***officer***, in relation to an amalgamated organisation, includes:

- (a) a delegate or other representative of the organisation; and
- (b) an employee of the organisation.

## **Chapter 4—Representation orders**

### **Part 1—Simplified outline**

#### **132 Simplified outline**

This Chapter enables the Commission to make orders, in the context of demarcation disputes, about the representation rights of organisations of employees.

The Commission must take certain factors into account before making a representation order (see section 135).

## **Part 2—Representation orders**

### **133 Orders about representation rights of organisations of employees**

- (1) Subject to this Chapter and subsection 151(6), the Commission may, on the application of an organisation, an employer or the Minister, make the following orders in relation to a demarcation dispute:
  - (a) an order that an organisation of employees is to have the right, to the exclusion of another organisation or other organisations, to represent under this Schedule or the Workplace Relations Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation;
  - (b) an order that an organisation of employees that does not have the right to represent under this Schedule or the Workplace Relations Act the industrial interests of a particular class or group of employees is to have that right;
  - (c) an order that an organisation of employees is not to have the right to represent under this Schedule or the Workplace Relations Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation.
- Note: Section 151 deals with agreements between organisations of employees and State unions.
- (2) The Commission may, on application by an organisation, an employer or the Minister, vary an order made under subsection (1).

### **134 Preconditions for making of orders**

- (1) The Commission must not make an order unless:
  - (a) it has decided under section 100 of the Workplace Relations Act not to refer the dispute for conciliation; or
  - (b) a conciliation proceeding in relation to the dispute is completed (within the meaning of section 103 of the Workplace Relations Act), but the dispute has not been fully settled.

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- (2) The Commission must not make an order unless the Commission is satisfied that:
- (a) the conduct, or threatened conduct, of an organisation to which the order would relate, or of an officer, member or employee of the organisation:
    - (i) is preventing, obstructing or restricting the performance of work; or
    - (ii) is harming the business of an employer; or
  - (b) the consequences referred to in subparagraph (a)(i) or (ii):
    - (i) have ceased, but are likely to recur; or
    - (ii) are imminent;
- as a result of such conduct or threatened conduct.

**135 Factors to be taken into account by Commission**

In considering whether to make an order under section 133, the Commission must have regard to the wishes of the employees who are affected by the dispute and, where the Commission considers it appropriate, is also to have regard to:

- (a) the effect of any order on the operations (including operating costs, work practices, efficiency and productivity) of an employer who is a party to the dispute or who is a member of an organisation that is a party to the dispute; and
- (b) any agreement or understanding of which the Commission becomes aware that deals with the right of an organisation of employees to represent under this Schedule or the Workplace Relations Act the industrial interests of a particular class or group of employees; and
- (c) the consequences of not making an order for any employer, employees or organisation involved in the dispute; and
- (d) any other order made by the Commission, in relation to another demarcation dispute involving the organisation to which the order under this section would relate, that the Commission considers to be relevant.

Note: Under section 135 of the Workplace Relations Act, the Commission may order that a vote of the members of an organisation concerned in the dispute be taken by secret ballot for the purpose of finding out their attitudes to the dispute.

### **136 Order may be subject to limits**

The order may be subject to conditions or limitations.

### **137 Organisation must comply with order**

- (1) An organisation to which the order applies must comply with the order.
- (2) The Federal Court may, on application by the Minister or a person or organisation affected by an order made under section 133, make such orders as it thinks fit to ensure compliance with that order.

### **138 Exercise of Commission's powers under this Chapter**

The powers of the Commission under this Chapter are exercisable only by a Full Bench or Presidential Member.

## **Chapter 5—Rules of organisations**

### **Part 1—Simplified outline of Chapter**

#### **139 Simplified outline**

This Chapter sets out the requirements that organisations' rules must comply with (see Part 2).

Part 3 sets out processes available to members who think that their organisation's rules do not comply with this Chapter, or are not being followed.



## **Part 2—Rules of organisations**

### **Division 1—General**

#### **140 Organisations to have rules**

- (1) An organisation must have rules that make provision as required by this Schedule.
- (2) A rule of an organisation making provision required by this Schedule to be made may be mandatory or directory.

#### **141 Rules of organisations**

- (1) The rules of an organisation:
  - (a) must specify the purposes for which the organisation is formed and the conditions of eligibility for membership; and
  - (b) must provide for:
    - (i) the powers and duties of the committees of the organisation and its branches, and the powers and duties of holders of offices in the organisation and its branches; and
    - (ii) the manner of summoning meetings of members of the organisation and its branches, and meetings of the committees of the organisation and its branches; and
    - (iii) the removal of holders of offices in the organisation and its branches; and
    - (iv) the control of committees of the organisation and its branches respectively by the members of the organisation and branches; and
    - (v) the manner in which documents may be executed by or on behalf of the organisation; and
    - (vi) the manner of notifying the Commission of industrial disputes; and
    - (vii) the times when, and the terms on which, persons become or cease (otherwise than by resignation) to be members; and
    - (viii) the resignation of members under section 174; and

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- (ix) the manner in which the property of the organisation is to be controlled and its funds invested; and
- (x) the yearly or other more frequent audit of the accounts; and
- (xi) the conditions under which funds may be spent; and
- (xii) the keeping of a register of the members, arranged, where there are branches of the organisation, according to branches; and
- (xiii) the manner in which its rules may be altered; and
- (c) may provide for the removal from office of a person elected to an office in the organisation only where the person has been found guilty, under the rules of the organisation, of:
  - (i) misappropriation of the funds of the organisation; or
  - (ii) a substantial breach of the rules of the organisation; or
  - (iii) gross misbehaviour or gross neglect of duty;or has ceased, under the rules of the organisation, to be eligible to hold the office; and
- (d) must require the organisation to inform applicants for membership, in writing, of:
  - (i) the financial obligations arising from membership; and
  - (ii) the circumstances, and the manner, in which a member may resign from the organisation.

Note 1: Section 166 deals with entitlement to membership of organisations.

Note 2: See also section 179 (liability for arrears).

- (2) The rules of an organisation of employees may include provision for the eligibility for membership of the organisation of independent contractors who, if they were employees performing work of the kind which they usually perform as independent contractors, would be employees eligible for membership of the organisation.
- (3) The rules of an organisation may also provide for any other matter.
- (4) In this section:

***committee***, in relation to an organisation or branch of an organisation, means a collective body of the organisation or branch that has powers of the kind mentioned in paragraph (1)(b) of the definition of ***office*** in section 9.

## **142 General requirements for rules**

- (1) The rules of an organisation:
  - (a) must not be contrary to, or fail to make a provision required by this Schedule, the Workplace Relations Act, an award, a certified agreement or an old IR agreement, or otherwise be contrary to law; and
  - (b) must not be such as to prevent or hinder members of the organisation from:
    - (i) observing the law or the provisions of an award, an order of the Commission, a certified agreement or an old IR agreement; or
    - (ii) entering into written agreements under an award, an order of the Commission, a certified agreement or an old IR agreement; and
  - (c) must not impose on applicants for membership, or members, of the organisation, conditions, obligations or restrictions that, having regard to the objects of this Schedule and the Workplace Relations Act and the purposes of the registration of organisations under this Schedule, are oppressive, unreasonable or unjust; and
  - (d) must not discriminate between applicants for membership, or members, of the organisation on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (2) For the purposes of paragraph (1)(d), rules of an organisation are taken not to discriminate on the basis of age if the rules do not prevent the organisation setting its membership dues by reference to rates of pay even where those rates are set by reference to a person's age.

## **Division 2—Rules relating to elections for office**

### **143 Rules to provide for elections for offices**

- (1) The rules of an organisation:
  - (a) must provide for the election of the holder of each office in the organisation by:
    - (i) a direct voting system; or
    - (ii) a collegiate electoral system that, in the case of a full-time office, is a one-tier collegiate electoral system; and
  - (b) must provide for the conduct of every such election (including the acceptance or rejection of nominations) by a returning officer who is not the holder of any office in, or an employee of, the organisation or a branch, section or division of the organisation; and
  - (c) must provide that, if the returning officer conducting an election finds a nomination to be defective, the returning officer must, before rejecting the nomination, notify the person concerned of the defect and, where practicable, give the person the opportunity of remedying the defect within such period as is applicable under the rules, which must, where practicable, be not less than 7 days after the person is notified; and
  - (d) must make provision for:
    - (i) the manner in which persons may become candidates for election; and
    - (ii) the duties of returning officers; and
    - (iii) the declaration of the result of an election; and
  - (e) must provide that, where a ballot is required, it must be a secret ballot, and must make provision for:
    - (i) in relation to a direct voting system ballot (including a direct voting system ballot that is a stage of an election under a collegiate electoral system)—the day on which the roll of voters for the ballot is to be closed; and
    - (ii) absent voting; and
    - (iii) the conduct of the ballot; and

- (iv) the appointment, conduct and duties of scrutineers to represent the candidates at the ballot; and
  - (f) must be such as to ensure, as far as practicable, that no irregularities can occur in relation to an election.
- (2) Without limiting section 142, the rules of an organisation relating to elections may provide for compulsory voting.
  - (3) The day provided for in the rules of an organisation as the day on which the roll of voters is to be closed (see paragraph (1)(e)) must be a day no earlier than 30 days, and no later than 7 days, before the day on which nominations for the election open.
  - (4) A reference in this section to the rules of an organisation includes a reference to the rules of a branch of the organisation.
  - (5) The reference in paragraph (1)(c) to a nomination being defective does not include a reference to a nomination of a person that is defective because the person is not qualified to hold the office to which the nomination relates.
  - (6) The rules providing for the day on which the roll of voters for a ballot is to be closed are not to be taken to prevent the correction of errors in the roll after that day.

#### **144 Rules to provide for elections for office by secret postal ballot**

- (1) Where the rules of an organisation provide for election for an office to be by a direct voting system, the rules must also provide that, where a ballot is required for such an election, it must be a secret postal ballot.
- (2) An organisation may lodge in the Industrial Registry an application for an exemption from subsection (1), accompanied by particulars of proposed alterations of the rules of the organisation, to provide for the conduct of elections of the kind referred to in subsection (1) by a secret ballot other than a postal ballot.
- (3) If the Industrial Registrar is satisfied, on application by an organisation under subsection (2):
  - (a) that the proposed alterations of the rules:
    - (i) comply with and are not contrary to this Schedule (other than subsection (1)), the Workplace Relations Act,

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- awards, certified agreements and old IR agreements;  
and
  - (ii) are not otherwise contrary to law; and
  - (iii) have been decided on under the rules of the organisation; and
  - (b) that the conduct of a ballot under the rules of the organisation as proposed to be altered:
    - (i) is likely to result in a fuller participation by members of the organisation in the ballot than would result from a postal ballot; and
    - (ii) will afford to members entitled to vote an adequate opportunity of voting without intimidation;
- the Industrial Registrar may grant to the organisation an exemption from subsection (1).
- (4) Proposed alterations of the rules of an organisation referred to in subsection (2) take effect if and when the Industrial Registrar grants to the organisation an exemption from subsection (1).
  - (5) An exemption under subsection (3) remains in force until revoked under subsection (6).
  - (6) The Industrial Registrar may revoke an exemption granted to an organisation under subsection (3):
    - (a) on application by the organisation, if the Industrial Registrar is satisfied that the rules of the organisation comply with subsection (1); or
    - (b) if the Industrial Registrar is no longer satisfied:
      - (i) that the rules of the organisation provide for the conduct of elections of the kind referred to in subsection (1) by a secret ballot other than a postal ballot; or
      - (ii) of a matter referred to in paragraph (3)(b);and the Industrial Registrar has given the organisation an opportunity, as prescribed, to show cause why the exemption should not be revoked.
  - (7) Where the Industrial Registrar revokes an exemption granted to an organisation on the ground specified in paragraph (6)(b), the Industrial Registrar may, by instrument, after giving the organisation an opportunity, as prescribed, to be heard, determine such alterations (if any) of the rules of the organisation as are, in

the Industrial Registrar's opinion, necessary to bring them into conformity with subsection (1).

- (8) An alteration of the rules of an organisation determined under subsection (7) takes effect on the date of the instrument.
- (9) Subsection 81(1) of the Workplace Relations Act does not apply in relation to a decision of the Industrial Registrar to grant an exemption under subsection (3).

Note: Subsection 81(1) of the Workplace Relations Act provides for appeals from certain decisions of the Industrial Registrar.

- (10) This section applies in relation to elections for offices in branches of organisations as if references to an organisation were references to a branch of an organisation.

### **145 Rules to provide for terms of office**

- (1) The rules of an organisation must, subject to subsection (2), provide terms of office for officers in the organisation of no longer than 4 years without re-election.
- (2) The rules of an organisation, or a branch of an organisation, may provide that a particular term of office is extended for a specified period, where the extension is for the purpose of synchronising elections for offices in the organisation or branch, as the case may be.
- (3) The term of an office must not be extended under subsection (2) so that the term exceeds 5 years.
- (4) A reference in this section (other than subsection (2)) to the **rules of an organisation** includes a reference to the rules of a branch of the organisation.

### **146 Rules may provide for filling of casual vacancies**

- (1) The rules of an organisation may provide for the filling of a casual vacancy in an office by an ordinary election or, subject to this section, in any other manner provided in the rules.
- (2) Rules made under subsection (1) must not permit a casual vacancy, or a further casual vacancy, occurring within the term of an office

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to be filled, otherwise than by an ordinary election, for so much of the unexpired part of the term as exceeds:

- (a) 12 months; or
  - (b) three-quarters of the term of the office;
- whichever is the greater.
- (3) Where, under rules made under subsection (1), a vacancy in an office in an organisation is filled otherwise than by an ordinary election, the person filling the vacancy must be taken, for the purposes of the relevant provisions, to have been elected to the office under the relevant provisions.
  - (4) A reference in this section to the rules of an organisation includes a reference to the rules of a branch of the organisation.
  - (5) In this section:

***ordinary election*** means an election held under rules that comply with section 143.

***relevant provisions***, in relation to an organisation, means:

- (a) the provisions of this Schedule (other than this section); and
- (b) the rules of the organisation (other than rules made under subsection (1)) providing for the filling of a casual vacancy in an office otherwise than by an ordinary election.

***term***, in relation to an office, means the total period for which the last person elected to the office by an ordinary election (other than an ordinary election to fill a casual vacancy in the office) was entitled by virtue of that election (having regard to any rule made under subsection 145(2)) to hold the office without being re-elected.

## 147 Model rules for conduct of elections

- (1) The Minister may, by notice published in the *Gazette*, issue guidelines containing one or more sets of model rules for the conduct of elections for office. An organisation may adopt model rules in whole or in part, and with or without modification.
- (2) The Minister may, by signed instrument, delegate the power under subsection (1) to the Electoral Commissioner.

Note: The Minister may also delegate this power under section 343.



### **Division 3—Rules relating to conduct of officers and employees**

#### **148 Model rules about conduct of officers and employees**

The Minister may, by notice published in the *Gazette*, issue guidelines containing one or more sets of model rules about the conduct of officers and employees. An organisation may adopt the model rules in whole or in part, and with or without modification.

Note: Part 4 of Chapter 8 deals with the conduct of officers and employees.

## **Division 4—Other rules**

### **Subdivision A—Loans, grants and donations**

#### **149 Rules to provide conditions for loans, grants and donations by organisations**

- (1) The rules of an organisation must provide that a loan, grant or donation of an amount exceeding \$1,000 must not be made by the organisation unless the committee of management:
  - (a) has satisfied itself:
    - (i) that the making of the loan, grant or donation would be in accordance with the other rules of the organisation; and
    - (ii) in the case of a loan—that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory; and
  - (b) has approved the making of the loan, grant or donation.
- (2) In spite of subsection (1), the rules of an organisation may provide for a person authorised by the rules to make a loan, grant or donation of an amount not exceeding \$3,000 to a member of the organisation if the loan, grant or donation:
  - (a) is for the purpose of relieving the member or any of the member's dependants from severe financial hardship; and
  - (b) is subject to a condition to the effect that, if the committee of management, at the next meeting of the committee, does not approve the loan, grant or donation, it must be repaid as determined by the committee.
- (3) In considering whether to approve a loan, grant or donation made under subsection (2), the committee of management must have regard to:
  - (a) whether the loan, grant or donation was made under the rules of the organisation; and
  - (b) in the case of a loan:
    - (i) whether the security (if any) given for the repayment of the loan is adequate; and

- (ii) whether the arrangements for the repayment of the loan are satisfactory.
- (4) Nothing in subsection (1) requires the rules of an organisation to make provision of the kind referred to in that subsection in relation to payments made by the organisation by way of provision for, or reimbursement of, out-of-pocket expenses incurred by persons for the benefit of the organisation.
- (5) In this section, a reference to an **organisation** includes a reference to a branch of an organisation.
- (6) For the purposes of the application of this Division to a branch of an organisation, the members of the organisation constituting the branch are taken to be members of the branch.

### **Subdivision B—Agreements between organisations and State unions**

#### **150 Definitions**

In this Subdivision:

**ineligible State members**, in relation to an organisation, means the members of a State union who, under the eligibility rules of the organisation, are not eligible to be members of the organisation.

**State Act** means:

- (a) the *Industrial Relations Act 1996* of New South Wales; or
- (b) the *Industrial Relations Act 1999* of Queensland; or
- (c) the *Industrial Relations Act 1979* of Western Australia; or
- (d) the *Industrial and Employee Relations Act 1994* of South Australia; or
- (e) an Act of a State that is prescribed for the purposes of this Subdivision.

**State union**, in relation to an organisation, means:

- (a) an association of employees which is registered under a State Act; or
- (b) an association of employees in Tasmania which is neither registered under this Schedule nor part of an organisation registered under this Schedule;

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and which is composed substantially of persons who, under the eligibility rules of the organisation, are eligible to be members of the organisation.

**151 Membership agreements**

- (1) The rules of an organisation of employees may authorise the organisation to enter into agreements in the prescribed form with State unions to the effect that members of the State union concerned who are ineligible State members are eligible to become members of the organisation under the agreement.
- (2) If, under rules made under subsection (1), an organisation enters into an agreement with a State union, the organisation must lodge a copy of the agreement in the Industrial Registry.

Note: This subsection is a civil penalty provision (see section 305).

- (3) The agreement does not come into force unless and until the Industrial Registrar enters particulars of the agreement in the register kept under paragraph 13(1)(a).
- (4) The Industrial Registrar must not enter particulars of the agreement in that register unless he or she has been directed by the Commission to do so.
- (5) The Commission must not give such a direction to the Industrial Registrar unless the Commission is satisfied that the agreement:
  - (a) is not contrary to:
    - (i) any object of this Schedule or the Workplace Relations Act; or
    - (ii) any subsisting order made by the Commission relating to the organisation's eligibility rules; or
    - (iii) any subsisting agreement or understanding of which the Commission is aware that deals with the organisation's entitlement to represent under this Schedule, or the Workplace Relations Act, the industrial interests of a particular class or group of employees; and
  - (b) was entered into only for the purpose of:
    - (i) overcoming any legal or practical difficulty that might arise in connection with the participation, or possible participation, of ineligible State members in the

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administration of the organisation or in the conduct of its affairs; or

- (ii) encouraging and facilitating an amalgamation between the organisation and another organisation of employees.
  - (6) An organisation is not entitled to represent under this Schedule, or the Workplace Relations Act, the industrial interests of persons who are eligible for membership of the organisation only under an agreement entered into under rules made under subsection (1).
  - (7) If a person who became a member of an organisation under an agreement entered into under rules made under subsection (1) later becomes eligible for membership of the organisation under its eligibility rules, the organisation is not entitled to represent the industrial interests of the person until a record of the person's eligibility is entered in the register kept under paragraph 230(1)(a).
  - (8) If it appears to the Commission:
    - (a) of its own motion; or
    - (b) on application by an interested person;
 that an agreement entered into under rules made under subsection (1) may no longer be operating for a purpose mentioned in subparagraph (5)(b)(i) or (ii), the Commission must give to the parties to the agreement an opportunity to make oral or written submissions as to whether the agreement is still operating for such a purpose.
  - (9) If, after considering any such submissions and, in the case of an application under paragraph (8)(b), the matters raised by the applicant, the Commission is satisfied that the agreement is no longer operating for such a purpose, the Commission may, by order, terminate the agreement.
  - (10) The Industrial Registrar must as soon as practicable:
    - (a) give notice of the termination to each party to the agreement; and
    - (b) enter particulars of the termination in the register kept under paragraph 13(1)(a).
  - (11) If an organisation and a State union agree, in writing, to terminate an agreement entered into under rules made under subsection (1):
    - (a) the organisation must lodge in the Industrial Registry a copy of the agreement to terminate; and
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- (b) the Industrial Registrar must as soon as practicable enter particulars of the termination in the register kept under paragraph 13(1)(a).

Note: Paragraph (a) is a civil penalty provision (see section 305).

- (12) The termination of an agreement takes effect when particulars of the termination are entered in the register as mentioned in paragraph (10)(b) or (11)(b) and, when the termination takes effect, persons who became members of the organisation under the agreement (other than a person whose eligibility for membership of the organisation under its eligibility rules is recorded as mentioned in subsection (7)) cease to be members of the organisation.

**152 Assets and liabilities agreements**

- (1) The rules of an organisation of employees may authorise the organisation to enter into agreements with State unions setting out arrangements for the management and control of the assets and liabilities of the organisation and the State union concerned.
- (2) The agreements must be in the prescribed form.
- (3) If, under rules made under subsection (1), an organisation enters into an agreement with a State union, the organisation must lodge a copy of the agreement in the Industrial Registry.

Note: This subsection is a civil penalty provision (see section 305).

- (4) The agreement does not come into force unless and until the Industrial Registrar enters particulars of the agreement in the register kept under paragraph 13(1)(a).
- (5) The Industrial Registrar must not enter particulars of the agreement in that register unless he or she has been directed by the Commission to do so.
- (6) The Commission must not give such a direction to the Industrial Registrar unless the Commission is satisfied that the agreement:
  - (a) is not contrary to any object of this Schedule or the Workplace Relations Act; and
  - (b) does not adversely affect the interests of any lessor, lessee or creditor of the organisation or State union.

**153 Party to section 152 agreement may apply to Federal Court for orders**

- (1) An organisation or a State union who is a party to an agreement made under section 152 (a ***section 152 agreement***) may apply to the Federal Court for orders:
  - (a) requiring the other party to comply with the agreement; or
  - (b) resolving any difficulty in the operation or interpretation of the agreement;and the Court may make such orders as it thinks fit.
- (2) In making an order under subsection (1), the Court must have regard to the interests of any lessor, lessee or creditor of the organisation or State union.
- (3) An order made under subsection (1) has effect despite anything in the rules of the organisation or State union who are the parties to the agreement.

**154 Termination of section 152 agreement**

- (1) If an organisation and a State union agree, in writing, to terminate an agreement made under section 152 (a ***section 152 agreement***), the termination has no effect unless the parties apply to the Federal Court for approval under this section and the Court gives its approval.
- (2) The Court must not approve the termination unless:
  - (a) the parties have made an agreement (a ***termination agreement***) that makes appropriate provision for the management and control of the assets and liabilities of the organisation and State union after termination of the section 152 agreement; or
  - (b) the Court makes orders that will, in the Court's opinion, make appropriate provision for the management and control of the assets and liabilities of the organisation and State union after termination of the section 152 agreement.
- (3) In determining whether a termination agreement, or orders, make appropriate provision as required by subsection (2), the Court must have regard to the following factors:

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- (a) the positions of the organisation and State union in relation to their respective assets and liabilities before the section 152 agreement took effect;
  - (b) the fairness, in all the circumstances, of the manner in which relevant assets and liabilities acquired after the section 152 agreement took effect will be dealt with after termination of the agreement;
  - (c) how the interests of lessors, lessees or creditors of the organisation and the State union will be affected by the termination and subsequent arrangements;
  - (d) any other factor that the Court considers relevant.
- (4) If the Court approves a termination agreement, the Court must direct the Industrial Registrar to enter particulars of the agreement in the register kept under paragraph 13(1)(a), and particulars of any orders made by the Court that relate to the agreement.
- (5) A termination agreement takes effect on the day specified by the Court. The day specified by the Court must not be a day earlier than the day on which the Court approves the agreement.

**Subdivision C—Miscellaneous**

**155 Exercise of Commission's powers under this Division**

The powers of the Commission under this Division are exercisable only by a Presidential Member.



## **Division 5—Alteration of rules and evidence of rules**

### **156 Industrial Registrar may determine alterations of rules**

- (1) Where the rules of an organisation do not, in the Industrial Registrar's opinion, make provision required by this Schedule, the Industrial Registrar may, by instrument, after giving the organisation an opportunity, as prescribed, to be heard on the matter, determine such alterations of the rules as are, in the Industrial Registrar's opinion, necessary to bring them into conformity with this Schedule.
- (2) Alterations determined under subsection (1) take effect on the date of the instrument.

### **157 Commission may determine alteration of rules where there has been a breach of an undertaking**

- (1) If:
  - (a) in the course of an organisation being registered under section 19, an undertaking was given under subsection 19(2) to avoid demarcation disputes that might otherwise arise from an overlap between its eligibility rules and the eligibility rules of another organisation; and
  - (b) the first-mentioned organisation has breached the undertaking;the Commission may, by instrument, determine such alterations of the rules of the organisation as are, in the Commission's opinion, necessary to remove the overlap.
- (2) The Commission must give the organisation and the other organisation an opportunity, as prescribed, to be heard on the matter.
- (3) Alterations determined under subsection (1) take effect on the date of the instrument.

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**158 Change of name or alteration of eligibility rules of organisation**

- (1) A change in the name of an organisation, or an alteration of the eligibility rules of an organisation, does not take effect unless the Commission consents to the change or alteration.
- (2) The Commission may consent to a change or alteration in whole or part, but must not consent unless the Commission is satisfied that the change or alteration has been made under the rules of the organisation.
- (3) The Commission must not consent to a change in the name of an organisation unless the Commission is satisfied that the proposed new name of the organisation:
  - (a) is not the same as the name of another organisation; and
  - (b) is not so similar to the name of another organisation as to be likely to cause confusion.
- (4) The Commission must not consent to an alteration of the eligibility rules of an organisation if, in relation to persons who would be eligible for membership because of the alteration, there is, in the opinion of the Commission, another organisation:
  - (a) to which those persons could more conveniently belong; and
  - (b) that would more effectively represent those members.
- (5) However, subsection (4) does not apply if the Commission accepts an undertaking from the organisation seeking the alteration that the Commission considers appropriate to avoid demarcation disputes that might otherwise arise from an overlap between the eligibility rules of that organisation and the eligibility rules of the other organisation.
- (6) The Commission may refuse to consent to an alteration of the eligibility rules of an organisation if satisfied that the alteration would contravene an agreement or understanding to which the organisation is a party and that deals with the organisation's right to represent under this Schedule and the Workplace Relations Act the industrial interests of a particular class or group of persons.
- (7) The Commission may also refuse to consent to an alteration of the eligibility rules of an organisation if it:
  - (a) is satisfied that the alteration would change the effect of any order made by the Commission under section 133 about the

right of the organisation to represent under this Schedule and the Workplace Relations Act the industrial interests of a particular class or group of employees; and

- (b) considers that such a change would give rise to a serious risk of a demarcation dispute which would prevent, obstruct or restrict the performance of work in an industry, or harm the business of an employer.
- (8) Subsections (6) and (7) do not limit the grounds on which the Commission may refuse to consent to an alteration of the eligibility rules of an organisation.
- (9) Where the Commission consents, under subsection (1), to a change or alteration, the change or alteration takes effect on:
  - (a) where a date is specified in the consent—that date; or
  - (b) in any other case—the day of the consent.
- (10) This section does not apply to a change in the name, or an alteration of the eligibility rules, of an organisation that is:
  - (a) determined by the Commission under subsection 163(7); or
  - (b) proposed to be made for the purposes of an amalgamation under Part 2 of Chapter 3 or Division 4 of Part 7 of Chapter 11; or
  - (c) proposed to be made for the purposes of a withdrawal from amalgamation under Part 3 of Chapter 3.

### **159 Alteration of other rules of organisation**

- (1) An alteration of the rules (other than the eligibility rules) of an organisation does not take effect unless particulars of the alteration have been lodged in the Industrial Registry and a Registrar has certified that, in his or her opinion, the alteration:
  - (a) complies with, and is not contrary to, this Schedule, the Workplace Relations Act, awards, certified agreements and old IR agreements; and
  - (b) is not otherwise contrary to law; and
  - (c) has been made under the rules of the organisation.
- (2) Where particulars of an alteration of the rules (other than the eligibility rules) of an organisation have been lodged in the Industrial Registry, a Registrar may, with the consent of the

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organisation, amend the alteration for the purpose of correcting a typographical, clerical or formal error.

- (3) An alteration of rules that has been certified under subsection (1) takes effect on the day of certification.
- (4) This section does not apply in relation to an alteration of the rules of an organisation that is:
  - (a) proposed to be made in relation to an application for an exemption from subsection 144(1); or
  - (b) determined or certified by the Industrial Registrar under subsection 144(7) or section 156, 163, 246, 247 or 249; or
  - (c) proposed to be made for the purpose of an amalgamation under Part 2 of Chapter 3 or Division 4 of Part 7 of Chapter 11; or
  - (d) proposed to be made for the purposes of a withdrawal from amalgamation under Part 3 of Chapter 3.

**160 Certain alterations of rules to be recorded**

Where there has been a change in the name of an organisation, or an alteration of the eligibility rules of an organisation, under this Schedule, the Industrial Registrar must:

- (a) immediately enter, in the register kept under paragraph 13(1)(a), particulars of the change or alteration, and the date of effect of the change or alteration; and
- (b) as soon as practicable after the organisation produces its certificate of registration to the Industrial Registrar, amend the certificate accordingly and return it to the organisation.

**161 Evidence of rules**

In proceedings under this Schedule or the Workplace Relations Act, a copy of the rules of an organisation certified by a Registrar to be a true and correct copy is evidence of the rules of the organisation.

**162 Powers of Commission**

The powers of the Commission under this Division are exercisable only by a Presidential Member.

## **Part 3—Validity and performance of rules etc**

### **163 Rules contravening section 142**

#### *Application for order declaring rules contravene section 142*

- (1) A member, or an applicant for membership, of an organisation may apply to the Federal Court for an order under this section in relation to the organisation.
- (2) If the application is made by a member, the order under this section may declare that the whole or a part of a rule of an organisation contravenes section 142 or that the rules of an organisation contravene section 142 in a particular respect.
- (3) If the application is made by an applicant for membership, the order under this section may declare that the whole or a part of a rule of an organisation contravenes paragraph 142(1)(c) or (d) or that the rules of an organisation contravene paragraph 142(1)(c) or (d) in a particular respect.
- (4) An organisation in relation to which an application is made under this section must be given an opportunity of being heard by the Court.
- (5) The Court may, without limiting any other power of the Court to adjourn proceedings, adjourn proceedings in relation to an application under this section for such period and on such terms and conditions as it considers appropriate for the purpose of giving the organisation an opportunity to alter its rules.

#### *Effect of order*

- (6) Where an order under this section declares that the whole or a part of a rule contravenes section 142, the rule or that part of the rule, as the case may be, is taken to be void from the date of the order.

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*Appropriate authority may alter organisation's rules*

(7) Where:

- (a) the Court makes an order declaring as mentioned in subsection (2) or (3) in relation to the rules of an organisation; and
- (b) at the end of 3 months from the making of the order, the rules of the organisation have not been altered in a manner that, in the opinion of the appropriate authority, brings them into conformity with section 142 in relation to the matters that gave rise to the order;

the appropriate authority must, after giving the organisation an opportunity, as prescribed, to be heard on the matter, determine, by instrument, such alterations of the rules as will, in the appropriate authority's opinion, bring the rules into conformity with that section in relation to those matters.

Note: For the meaning of *appropriate authority* see subsection (12).

- (8) The appropriate authority may, on the application of the organisation made within the period of 3 months referred to in subsection (7) or within any extension of the period, extend, or further extend, the period.
- (9) Alterations determined under subsection (7) take effect on the date of the instrument.

*Court may make interim orders*

- (10) At any time after a proceeding under this section has been instituted, the Court may make any interim orders that it considers appropriate in relation to a matter relevant to the proceeding.
- (11) An order under subsection (10) continues in force, unless expressed to operate for a shorter period or sooner discharged, until the completion of the proceeding concerned.

*Definitions*

(12) In this section:

*appropriate authority* means:

- (a) in relation to the eligibility rules of an organisation—a Presidential Member of the Commission; or

(b) in relation to the other rules of an organisation—the Industrial Registrar.

- (13) In this section, a reference to ***a rule, or the rules, of an organisation*** includes a reference to a rule, or the rules, of a branch of an organisation.

## **164 Directions for performance of rules**

### *Application for order directing performance of rules*

- (1) A member of an organisation may apply to the Federal Court for an order under this section in relation to the organisation.

Note: For the meaning of ***order under this section***, see subsection (9).

- (2) Before making an order under this section, the Court must give any person against whom the order is sought an opportunity of being heard.
- (3) The Court may refuse to deal with an application for an order under this section unless it is satisfied that the applicant has taken all reasonable steps to try to have the matter that is the subject of the application resolved within the organisation.

### *Court may make interim orders*

- (4) At any time after the making of an application for an order under this section, the Court may make any interim orders that it considers appropriate and, in particular, orders intended to further the resolution within the organisation concerned of the matter that is the subject of the application.
- (5) An order under subsection (4) continues in force, unless expressed to operate for a shorter period or sooner discharged, until the completion of the proceeding concerned.

### *Definition*

- (9) In this section:

***order under this section*** means an order giving directions for the performance or observance of any of the rules of an organisation by any person who is under an obligation to perform or observe those rules.

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**164A Directions to rectify breach of rule of organisation**

*Application for order*

- (1) A member of an organisation may apply to the Federal Court for an order under subsection 4 in relation to the organisation.
- (2) Before making the order, the Court must give any person against whom the order is sought an opportunity of being heard.

*Conditions for making order*

- (3) The Court may make an order under subsection (4) in relation to an organisation if the Court is satisfied that:
  - (a) a person was under an obligation to perform or observe a rule or rules of the organisation; and
  - (b) the person breached the rule or rules; and
  - (c) the person acted unreasonably in so breaching the rule or rules.

*Nature of order*

- (4) Subject to section 164B, the Court may make an order directing one or more persons (who may be, or include, the person who breached the rule or rules) to do specified things that will, in the opinion of the Court, as far as is reasonably practicable, place the organisation in the position in which it would have been if the breach of the rule or rules had not occurred.
- (5) The Court may make the order whether or not, at the time of making the order, the person is a member or officer of the organisation.

**164B Orders under sections 164 and 164A**

*Order must not invalidate election etc.*

- (1) An order must not be made under section 164 or 164A that would have the effect of treating as invalid an election to an office in an organisation or a step in relation to such an election.



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*Order must not require compensation*

- (2) An order under section 164A does not include an order directing one or more persons to compensate an organisation for any loss or damage suffered by the organisation caused by the breach of the rule or rules.

Note: An application for a compensation order may be made under Part 2 of Chapter 10 of this Schedule.

*Court may declare that rules contravene section 142*

- (3) Where the Court, in considering an application under section 164 or 164A, finds that the whole or a part of a rule of the organisation concerned contravenes section 142 or that the rules of the organisation concerned contravene that section in a particular respect, the Court may, by order, make a declaration to that effect.
- (4) Section 163 (other than subsections (1) to (5) (inclusive)) applies in relation to an order made under subsection (3) of this section as if the order had been made under section 163.

*Definition*

- (5) In this section:

***election*** includes a purported election that is a nullity.

## **Chapter 6—Membership of organisations**

### **Part 1—Simplified outline of Chapter**

#### **165 Simplified outline**

This Chapter sets out rules about membership of organisations. It covers entitlement to membership, circumstances in which a person may cease to be a member, recovery of money from members by organisations, and conscientious objection to membership.

This Chapter also gives the Federal Court a role in deciding a person's membership status.

## Part 2—Entitlement to membership

### 166 Entitlement to become and to remain a member

#### *Employee organisations*

- (1) Subject to any award or order of the Commission, a person who is eligible to become a member of an organisation of employees under the eligibility rules of the organisation that relate to the occupations in which, or the industry or enterprise in relation to which, members are to be employed is, unless of general bad character, entitled, subject to payment of any amount properly payable in relation to membership:
  - (a) to be admitted as a member of the organisation; and
  - (b) to remain a member so long as the person complies with the rules of the organisation.

Note 1: Rules of an organisation must provide for the circumstances in which a person ceases to be a member of an organisation (see subparagraph 141(1)(b)(vii)).

Note 2: If a member fails to pay his or her membership dues for 24 months, this may result in the person ceasing to be a member, regardless of the rules of the organisation (see section 172).

Note 3: See also section 168, which deals with a special case of entitlement to membership (person treated as having been a member).
- (2) Subsection (1) does not entitle a person to remain a member of an organisation if the person ceases to be eligible to become a member and the rules of the organisation do not permit the person to remain a member.
- (3) A person who is qualified to be employed in a particular occupation, and seeks to be employed in the occupation:
  - (a) is taken to be an employee for the purposes of this section; and
  - (b) in spite of anything in the rules of the organisation, is not to be treated as not being eligible for membership of an organisation merely because the person has never been employed in the occupation.

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*Employer organisations*

- (4) Subject to subsection (5) and to any award or order of the Commission, an employer who is eligible to become a member of an organisation of employers is entitled, subject to payment of any amount properly payable in relation to membership:
  - (a) to be admitted as a member of the organisation; and
  - (b) to remain a member so long as the employer complies with the rules of the organisation.
- (5) Subsection (4) does not entitle an employer:
  - (a) to become a member of an organisation if the employer is:
    - (i) a natural person who is of general bad character; or
    - (ii) a body corporate whose constituent documents make provisions inconsistent with the purposes for which the organisation was formed; or
  - (b) to remain a member of an organisation if the employer ceases to be eligible to become a member and the rules of the organisation do not permit the employer to remain a member.

*This section overrides inconsistent rules*

- (6) Subsections (1) and (4) have effect in spite of anything in the rules of the organisation concerned, except to the extent that they expressly require compliance with those rules.

**167 Federal Court may declare on person's entitlement to membership**

*Who may apply to Federal Court*

- (1) Where a question arises as to the entitlement under section 166 of a person:
  - (a) to be admitted as a member of an organisation (whether for the first time or after having resigned, or been removed, as a member of the organisation); or
  - (b) to remain a member of an organisation;application may be made to the Federal Court for a declaration as to the entitlement of the person under this section by either of the following:
  - (c) the person;

- (d) the organisation concerned.

*Court may make orders relating to its declaration*

- (2) On the hearing of an application under subsection (1), the Court may, in spite of anything in the rules of the organisation concerned, make such order to give effect to its declaration as it considers appropriate.
- (3) The orders which the Court may make under subsection (2) include:
- (a) an order requiring the organisation concerned to treat a person to whom subsection 166(1) or (4) applies as being a member of the organisation; and
  - (b) in the case of a question as to the entitlement under this section of a person to be admitted as a member of an organisation, where the person has previously been removed from membership of the organisation—an order that the person be taken to have been a member of the organisation in the period between the removal of the person from membership and the making of the order.

*Effect of orders*

- (4) On the making of an order as mentioned in paragraph (3)(a), or as otherwise specified in the order, the person specified in the order becomes, by force of this section, a member of the organisation concerned.
- (5) Where:
- (a) an order is made as mentioned in paragraph (3)(b); and
  - (b) the person specified in the order pays to the organisation concerned any amount that the person would have been liable to pay to the organisation if the person had been a member of the organisation during the period specified in the order;
- the person is taken to have been a member of the organisation during the period specified in the order.

*Court to give certain people opportunity to be heard*

- (6) Where an application is made to the Court under this section:

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- (a) if the application is made by an organisation—the person whose entitlement is in question must be given an opportunity of being heard by the Court; and
- (b) if the application is made by the person whose entitlement is in question—the organisation concerned must be given an opportunity of being heard by the Court.

**168 Application for membership of organisation by person treated as having been a member**

(1) Where:

- (a) a person who is eligible for membership of an organisation (other than a member of the organisation or a person who has been expelled from the organisation) applies to be admitted as a member of the organisation; and
- (b) the person has, up to a time within one month before the application, acted in good faith as, and been treated by the organisation as, a member;

the person is entitled to be admitted to membership and treated by the organisation and its members as though the person had been a member during the whole of the time when the person acted as, and was treated by the organisation as, a member and during the whole of the time from the time of the person's application to the time of the person's admission.

(2) Where a question arises as to the entitlement under this section of a person to be admitted as a member and to be treated as though the person had been a member during the times referred to in subsection (1):

- (a) the person; or
- (b) the organisation;

may apply to the Federal Court for a declaration as to the entitlement of the person under this section.

(3) Subject to subsection (5), the Court may, in spite of anything in the rules of the organisation concerned, make such orders (including mandatory injunctions) to give effect to its determination as it considers appropriate.

(4) The orders that the Court may make under subsection (3) include an order requiring the organisation concerned to treat a person to whom subsection (1) applies as being a member of the organisation

and as having been a member during the times referred to in subsection (1).

- (5) Where an application is made to the Court under this section:
- (a) if the application is made by an organisation—the person whose entitlement is in question must be given an opportunity to be heard by the Court; and
  - (b) if the application is made by the person whose entitlement is in question—the organisation concerned must be given an opportunity to be heard by the Court.

### **169 Request by member for statement of membership**

An organisation must, at the request of a person who is a member, give to the person, within 28 days after the request is made, a statement showing:

- (a) that the person is a member of the organisation; and
- (b) where there are categories of membership of the organisation—the category of the person's membership; and
- (c) if the person expressly requests—whether the person is a financial member of the organisation.

Note: This section is a civil penalty provision (see section 305).

### **170 Rectification of register of members**

The Federal Court may at any time, in a proceeding under this Schedule or the Workplace Relations Act, order such rectifications of the register of members of an organisation as it considers necessary.

## **Part 3—Termination of membership**

### **171 Federal Court may order that persons cease to be members of organisations**

The Federal Court may, on the application of an organisation, order that a person's membership of that organisation or another organisation is to cease from a day, and for a period, specified in the order.

### **172 Non-financial members to be removed from the register**

(1) If:

- (a) the rules of an organisation require a member to pay dues in relation to the person's membership of the organisation; and
- (b) the member has not paid the amount; and
- (c) a continuous period of 24 months has elapsed since the amount became payable; and
- (d) the member's name has not been removed from the register kept by the organisation under paragraph 230(1)(a);

the organisation must remove the name and postal address of the member from the register within 12 months after the end of the 24 month period.

Note: This subsection is a civil penalty provision (see section 305).

- (2) In calculating a period for the purposes of paragraph (1)(c), any period in relation to which the member was not required by the rules of the organisation to pay the dues is to be disregarded.
- (3) A person whose name is removed from the register under this section ceases to be a member of the organisation on the day his or her name is removed. This subsection has effect in spite of anything in the rules of the organisation.

Note: A non-financial member's membership might cease and his or her name be removed from the register earlier than is provided for by this section if the organisation's own rules provide for this to happen.

### **173 No entrance fee if person re-joins within 6 months**

(1) If:

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- (a) a person applies for membership of an organisation within 6 months after the person's membership has ceased under section 172; and
  - (b) the application is accepted by the organisation;  
the organisation must not require the person to pay any fee associated with a new membership (other than membership dues) in relation to the membership for which the person has applied.
- (2) This section is not to be taken to prevent an organisation requiring (whether by means of its rules or otherwise) payment of outstanding dues in order for a person to maintain continuity of financial membership.

### **174 Resignation from membership**

- (1) A member of an organisation may resign from membership by written notice addressed and delivered to a person designated for the purpose in the rules of the organisation or a branch of the organisation.

Note: The notice of resignation can be given electronically if the organisation's rules allow for this (see section 9 of the *Electronic Transactions Act 1999*).

- (2) A notice of resignation from membership of an organisation takes effect:
- (a) where the member ceases to be eligible to become a member of the organisation:
    - (i) on the day on which the notice is received by the organisation; or
    - (ii) on the day specified in the notice, which is a day not earlier than the day when the member ceases to be eligible to become a member;whichever is later; or
  - (b) in any other case:
    - (i) at the end of 2 weeks, or such shorter period as is specified in the rules of the organisation, after the notice is received by the organisation; or
    - (ii) on the day specified in the notice;whichever is later.
- (3) Any dues payable but not paid by a former member of an organisation, in relation to a period before the member's

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resignation from the organisation took effect, may be sued for and recovered in the name of the organisation, in a court of competent jurisdiction, as a debt due to the organisation.

- (4) A notice delivered to the person mentioned in subsection (1) is taken to have been received by the organisation when it was delivered.
- (5) A notice of resignation that has been received by the organisation is not invalid because it was not addressed and delivered in accordance with subsection (1).
- (6) A resignation from membership of an organisation is valid even if it is not effected in accordance with this section if the member is informed in writing by or on behalf of the organisation that the resignation has been accepted.

Note: Regulations may require employers who offer payroll deduction facilities to inform employees that cessation of payroll deduction by an employee does not constitute resignation (see section 359).

## **Part 4—False information, disputes and arrears of dues**

### **175 False representation as to membership of organisation**

A person must not, in an application made under this Schedule or the Workplace Relations Act, make a statement about the person's membership of an organisation if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This section is a civil penalty provision (see section 305).

### **176 False representation about resignation from organisation**

A person (the *first person*) must not provide information about resignation from an organisation to a member, or a person eligible to become a member, of the organisation if the person knows, or is reckless as to whether, the information is false or misleading.

Note: This section is a civil penalty provision (see section 305).

### **177 Disputes between organisations and members**

- (1) A dispute between an organisation and any of its members is to be decided under the rules of the organisation.
- (2) Any fine, fee, levy or dues payable to an organisation by a member in relation to a period after the organisation was registered may be sued for and recovered, in the name of the organisation, as a debt due to the organisation, in a court of competent jurisdiction.
- (3) A court of competent jurisdiction may, on application brought in the name of an organisation, order the payment by a member of any contribution (not exceeding \$20) to a penalty incurred or money payable by the organisation under an award, order, certified agreement or old IR agreement.

### **178 Recovery of arrears**

- (1) In spite of subsection 177(2), legal proceedings for the recovery of an amount payable by a person in relation to the person's membership of an organisation must not be commenced after the

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end of the period of 12 months starting on the day on which the amount became payable.

- (2) The amount ceases to be payable at the end of the period if legal proceedings to recover the amount have not been commenced by then.

**179 Liability for arrears**

- (1) Where a person has ceased to be eligible to become a member of an organisation and that person has not actively participated in the affairs of the organisation since that time, those circumstances are a defence to an action by the organisation for arrears of dues payable from the time when the person ceased to be so eligible.
- (2) Where such a defence is successful, that person is taken to have ceased to be a member from the time that the person ceased to be so eligible.

## **Part 5—Conscientious objection to membership**

### **180 Conscientious objection to membership of organisations**

- (1) Where a natural person:
  - (a) on application made to a Registrar, satisfies the Registrar:
    - (i) in the case of a person who is an employer or is otherwise eligible to join an organisation of employers—that the person’s conscientious beliefs do not allow the person to be a member of an association of the kind described in paragraph 18(1)(a); or
    - (ii) in the case of a person who is an employee or is otherwise eligible to join an organisation of employees—that the person’s conscientious beliefs do not allow the person to be a member of an association of the kind described in paragraph 18(1)(b) or 18(1)(c); and
  - (b) pays the prescribed fee to the Registrar;

the Registrar must issue to the person a certificate to that effect in the prescribed form.
- (2) An appeal does not lie to the Commission under section 81 of the Workplace Relations Act against a decision of a Registrar to issue a certificate under subsection (1).
- (3) Subject to subsection (4), a certificate under subsection (1) remains in force for the period (not exceeding 12 months) specified in the certificate, but may, as prescribed, be renewed from time to time by a Registrar for such period (not exceeding 12 months) as the Registrar considers appropriate.
- (4) Where:
  - (a) a Registrar becomes aware of a matter that was not known to the Registrar when a certificate was issued by the Registrar to a person under subsection (1); and
  - (b) if the Registrar had been aware of the matter when the application for the certificate was being considered, the Registrar would not have issued the certificate;

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the Registrar may, after giving the person an opportunity, as prescribed, to show cause why the certificate should not be revoked, revoke the certificate.

- (5) The holding by an employer of a certificate issued under subsection (1) does not prevent the employer being a party to an industrial dispute.
- (6) In this section:

***appropriate organisation***, in relation to a person who has made an application under subsection (1), means the organisation that, in the opinion of the Registrar dealing with the application, would, but for the person's conscientious beliefs, be the appropriate organisation for the person to join having regard to:

- (a) in the case of a person who is an employer—the industry in relation to which the person is an employer; or
- (b) in the case of a person who is otherwise eligible to join an organisation of employers—the business carried on by the person; or
- (c) in the case of a person who is an employee—the past employment (if any), and the future prospects of employment, of the person; or
- (d) in the case of a person who is otherwise eligible to join an organisation of employees—the work done by the person or the enterprise in which the person works.

***conscientious beliefs*** means any conscientious beliefs, whether the grounds for the beliefs are or are not of a religious character and whether the beliefs are or are not part of the doctrine of any religion.

***prescribed fee***, in relation to a person who has made an application under subsection (1), means a fee equal to the annual subscription that would be payable by the person if the person were a member of the appropriate organisation.

## **Chapter 7—Democratic control**

### **Part 1—Simplified outline of Chapter**

#### **181 Simplified outline**

This Chapter deals with elections for positions in organisations. It does not deal with other kinds of ballots (for example, amalgamation and disamalgamation ballots, which are dealt with in Chapter 3).

Part 2 sets out the rules for the conduct of elections. Elections for office must generally be conducted by the AEC. This Part also requires the AEC to conduct elections for some positions that are not offices, if the organisation concerned requests the AEC to do so.

Part 3 provides for inquiries by the Federal Court into elections for office.

Part 4 sets out the circumstances in which people are disqualified from holding, or being elected to hold, office in organisations.

## Part 2—Conduct of elections for office and other positions

### 182 Conduct by AEC

#### *Elections for office*

- (1) Each election for an office in an organisation, or branch of an organisation, must be conducted by the AEC. The expenses of conducting such an election are to be borne by the Commonwealth.

Note: For the meaning of *office*, see section 9.

- (2) Subsection (1) does not apply in relation to an election for an office in an organisation or branch while an exemption granted to the organisation or branch, as the case may be, under section 186 is in force in relation to elections in the organisation or branch or an election for the particular office.

#### *Elections for other positions*

- (3) If an organisation or branch of an organisation has made a request under section 187 in relation to an election for a position other than an office, the AEC must conduct the election.

### 183 Application for organisation or branch to conduct its elections for office

- (1) A committee of management of an organisation or branch of an organisation may lodge in the Industrial Registry an application for the organisation or branch, as the case may be, to be exempted from subsection 182(1) in relation to elections for offices, or an election for a particular office, in the organisation or branch.
- (2) An application may not be made by a committee of management of an organisation or branch of an organisation unless the committee of management:
  - (a) has resolved to make the application; and
  - (b) has notified the members of the organisation or branch, as prescribed, of the making of the resolution.



- (3) An application under subsection (1) must be accompanied by a declaration by a member of the committee of management concerned stating that subsection (2) has been complied with.
- (4) Where an application has been made under subsection (1), the Industrial Registrar must cause a notice setting out details of the application to be published, as prescribed, for the purpose of bringing the notice to the attention of members of the organisation or branch concerned.
- (5) Where the rules of an organisation require an office to be filled by an election by the members, or by some of the members, of a single branch of the organisation, an election to fill the office is taken to be an election for the branch.

#### **184 Objections to application to conduct elections for office**

- (1) Objection may be made to an application under subsection 183(1) by a member of the organisation or branch of the organisation in relation to which the application was made.
- (2) The Industrial Registrar or, if the Industrial Registrar directs, another Registrar must, as prescribed, hear the application and any objections duly made.

#### **185 Threats etc. in relation to section 184 objections**

- (1) A person commits an offence if the person uses, causes or inflicts any violence, injury, punishment, damage, loss or disadvantage to another person because the other person has lodged an objection under subsection 184(1).  
  
Maximum penalty: 30 penalty units.
- (2) A person commits an offence if the person:
  - (a) gives, or offers or promises to give, any property or benefit of any kind with the intention of influencing or affecting another person because the other person proposes to lodge, or has lodged, an objection under subsection 184(1); or
  - (b) asks for or obtains, or offers or agrees to ask for or obtain, any property or benefit of any kind (whether for that person or another person), on the understanding that the lodging of

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an objection under subsection 184(1) will be influenced or affected in any way.

Maximum penalty: 30 penalty units.

**186 Registrar may permit organisation or branch to conduct its elections for office**

- (1) Where an application in relation to an organisation or branch has been lodged under subsection 183(1) and, after any objections duly made have been heard, a Registrar is satisfied:

- (a) that the rules of the organisation or branch comply with the requirements of this Schedule relating to the conduct of elections for office; and
- (b) that, if the organisation or branch is exempted from subsection 182(1), the elections for the organisation or branch, or the election for the particular office, as the case may be, will be conducted:
  - (i) under the rules of the organisation or branch, as the case may be, and this Schedule; and
  - (ii) in a manner that will afford members entitled to vote at such elections or election an adequate opportunity of voting without intimidation;

the Registrar may exempt the organisation or branch from subsection 182(1) in relation to elections for the organisation or branch, or the election for the particular office, as the case may be.

- (2) A Registrar may revoke an exemption granted to an organisation or branch under subsection (1):
- (a) on application by the committee of management of the organisation or branch; or
  - (b) if the Registrar:
    - (i) is no longer satisfied as mentioned in subsection (1); and
    - (ii) has given the committee of management of the organisation or branch an opportunity, as prescribed, to show cause why the exemption should not be revoked.

### **187 Organisation may ask AEC to conduct elections for positions other than offices**

- (1) If the rules of an organisation or branch of an organisation require an election to be held for a position other than an office in the organisation or branch, the organisation or branch, as the case may be, may request the AEC to conduct the election.

Note: For the meaning of *office*, see section 9.

- (2) The request must be:
  - (a) in writing; and
  - (b) signed by an officer of the organisation or branch who is authorised to do so by the committee of management of the organisation or branch; and
  - (c) given to the AEC.
- (3) A copy of the request must also be lodged in the Industrial Registry at the same time as the prescribed information in relation to the election is lodged (see section 189).

### **188 Declaration envelopes etc. to be used for postal ballots**

If the rules of an organisation provide for elections for office by postal ballot, a vote in the election cannot be counted unless the ballot paper on which it is recorded is returned as follows:

- (a) the ballot paper must be in the declaration envelope provided to the voter with the ballot paper;
- (b) the declaration envelope must be in another envelope that is in the form prescribed by the regulations.

### **189 Registrar to arrange for conduct of elections**

- (1) An organisation or branch of an organisation must lodge in the Industrial Registry the prescribed information in relation to an election that is to be conducted by the AEC.
- (2) The prescribed information must be lodged before the prescribed day or such later day as a Registrar allows.

Note: This subsection is a civil penalty provision (see section 305).

- (3) If:

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- (a) the prescribed information is lodged in the Industrial Registry by the organisation or branch (whether or not before the prescribed day or the later day allowed by a Registrar); and
  - (b) a Registrar is satisfied that an election is required to be held under the rules of the organisation or branch; and
  - (c) if the election is not an election for an office—the organisation or branch has made a request under section 187;
- a Registrar must arrange for the conduct of the election by the AEC.

**190 Organisation or branch must not assist one candidate over another**

An organisation or branch commits an offence if it uses, or allows to be used, its property or resources to help a candidate against another candidate in an election under this Part for an office or other position.

Maximum penalty: 100 penalty units.

**191 Organisation to provide returning officer with copy of register**

- (1) A person (the *returning officer*) conducting an election under this Part for an office or other position in an organisation, or branch of an organisation, may give a written request to an officer or employee of the organisation or branch to make available the register of members, or part of the register, kept by the organisation under section 230, to the returning officer for the purposes of the ballot.
- (2) An officer or employee of the organisation or branch commits an offence if he or she fails to comply with a request under subsection (1).

Maximum penalty: 30 penalty units.

- (3) Subsection (2) does not apply if the officer or employee complied with the request as promptly as he or she was capable.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (3).

- (4) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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- (5) If the register, or the relevant part of the register, is kept in electronic form, the returning officer may require the register to be made available in that form.
- (6) A request under subsection (1) must specify the period within which the register must be made available. The period must not be less than 7 days after the request is given.

## **192 Declaration by secretary etc. of organisation**

- (1) If:
  - (a) a returning officer makes a request under section 191 in relation to the organisation's register; and
  - (b) the returning officer gives written notice of the request to the secretary or other prescribed officer of the organisation or branch concerned;

the secretary or other prescribed officer of the organisation must make a declaration, in accordance with subsection (2), that the register has been maintained as required by subsection 230(2).

Note: This subsection is a civil penalty provision (see section 305).

- (2) The declaration must be:
  - (a) signed by the person making it; and
  - (b) given to the returning officer, and lodged in the Industrial Registry, as soon as practicable but no later than the day before the first day of voting in the relevant election.
- (3) A person must not, in a declaration for the purposes of subsection (1), make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This subsection is a civil penalty provision (see section 305).

## **193 Provisions applicable to elections conducted by AEC**

- (1) If an electoral official is conducting an election, or taking a step in relation to an election, for an office or other position in an organisation, or branch of an organisation, the electoral official:
  - (a) subject to paragraph (b), must comply with the rules of the organisation or branch; and

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- (b) may, in spite of anything in the rules of the organisation or branch, take such action, and give such directions, as the electoral official considers necessary:
      - (i) to ensure that no irregularities occur in or in relation to the election; or
      - (ii) to remedy any procedural defects that appear to the electoral official to exist in the rules; or
      - (iii) to ensure the security of ballot papers and envelopes that are for use, or used, in the election.
  - (2) A person commits an offence if the person does not comply with a direction under subsection (1).

Maximum penalty: 30 penalty units.
  - (3) Subsection (2) does not apply so far as the person is not capable of complying.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).
  - (4) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (4), see subsection 13.3(3) of the *Criminal Code*.
  - (5) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
  - (6) An election for an office or other position conducted by an electoral official, or step taken in relation to such an election, is not invalid merely because of a breach of the rules of the organisation or branch because of:
    - (a) action taken under subsection (1); or
    - (b) an act done in compliance with a direction under subsection (1).
  - (7) If an electoral official conducting, or taking a step in connection with, an election for an office or other position:
    - (a) dies or becomes unable to complete the conduct of the election or the taking of the step; or
    - (b) ceases to be qualified to conduct the election or to take the step;
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the Electoral Commissioner must arrange for the completion of the conduct of the election, or the taking of the step, by another electoral official.

#### **194 Hindering or obstructing electoral official or other person**

A person commits an offence if the person hinders or obstructs:

- (a) an electoral official in the performance of functions in relation to an election for an office or other position in an organisation or branch of an organisation; or
- (b) any other person in complying with a direction under subsection 193(1).

Maximum penalty: 30 penalty units.

#### **195 Improper interference with election process**

- (1) This section applies in relation to an election for an office or other position in an organisation or branch of an organisation.

##### *Interference with ballot papers*

- (2) A person commits an offence if the person:
- (a) impersonates another person with the intention of:
    - (i) securing a ballot paper to which the impersonator is not entitled; or
    - (ii) casting a vote; or
  - (b) does an act that results in a ballot paper or envelope being destroyed, defaced, altered, taken or otherwise interfered with; or
  - (c) fraudulently puts a ballot paper or other paper:
    - (i) into a ballot box or other ballot receptacle; or
    - (ii) into the post; or
  - (d) delivers a ballot paper or other paper to a person other than a person receiving ballot papers for the purposes of the ballot; or
  - (e) records a vote that the person is not entitled to record; or
  - (f) records more than one vote; or
  - (g) forges a ballot paper or envelope, or utters a ballot paper or envelope that the person knows to be forged; or
  - (h) provides a ballot paper without authority; or

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- (i) obtains a ballot paper which the person is not entitled to obtain; or
- (j) has possession of a ballot paper which the person is not entitled to possess; or
- (k) does an act that results in a ballot box or other ballot receptacle being destroyed, taken, opened or otherwise interfered with.

Maximum penalty: 30 penalty units.

*Threats in relation to votes, candidature etc.*

- (3) A person commits an offence if the person threatens, offers or suggests, or uses, causes or inflicts, any violence, injury, punishment, damage, loss or disadvantage with the intention of influencing or affecting:
  - (a) any candidature or withdrawal of candidature; or
  - (b) any vote or omission to vote; or
  - (c) any support or opposition to any candidate; or
  - (d) any promise of any vote, omission, support or opposition.

Maximum penalty: 30 penalty units.

*Offers of bribes*

- (4) A person commits an offence if the person gives, or promises or offers to give, any property or benefit of any kind to a person with the intention of influencing or affecting any of the following:
  - (a) any candidature or withdrawal of candidature;
  - (b) any vote or omission to vote;
  - (c) any support or opposition to any candidate;
  - (d) any promise of any vote, omission, support or opposition.

Maximum penalty: 30 penalty units.

*Acceptance of bribes*

- (5) A person commits an offence if the person asks for or obtains, or offers or agrees to ask for or obtain, any property or benefit of any kind (whether for that person or another person), on the understanding that any of the following will be influenced or affected in any way:



- (a) any candidature or withdrawal of candidature;
- (b) any vote or omission to vote;
- (c) any support or opposition to any candidate;
- (d) any promise of any vote, omission, support or opposition.

Maximum penalty: 30 penalty units.

*Secrecy of vote*

- (6) A person (the **relevant person**) commits an offence:
  - (a) if the relevant person requests, requires or induces another person to show a ballot paper to the relevant person, or permits the relevant person to see a ballot paper, in such a manner that the relevant person can see the vote, while the ballot paper is being marked or after it has been marked; or
  - (b) if the relevant person is a person performing duties for the purposes of the election—if the relevant person shows to another person, or permits another person to have access to, a ballot paper used in the election, otherwise than in the performance of the duties.

Maximum penalty: 30 penalty units.

## **196 Death of candidate**

In spite of anything in the rules of an organisation or branch of an organisation, where:

- (a) 2 or more candidates are nominated for an election in relation to an office in the organisation or branch; and
  - (b) one of those candidates dies before the close of the ballot;
- the election must be discontinued and a new election held.

## **197 Post-election report by AEC**

*Requirement for AEC to make report*

- (1) After the completion of an election conducted under this Part by the AEC, the AEC must give a written report on the conduct of the election to:
  - (a) the Industrial Registrar; and
  - (b) the organisation or branch for whom the election was conducted.

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Note: The AEC may be able, in the same report, to report on more than one election it has conducted for an organisation. However, regulations made under paragraph 359(2)(c) may impose requirements about the manner and timing of reports.

- (2) The report must include details of the prescribed matters.

*Contents of report—register of members*

- (3) If the AEC is of the opinion that the register of members, or the part of the register, made available to the AEC for the purposes of the election contained, at the time of the election:

- (a) an unusually large proportion of members' addresses that were not current; or
- (b) in the case of a register kept by an organisation of employees—an unusually large proportion of members' addresses that were workplace addresses;

this fact must be included in the report, together with a reference to any relevant model rules which, in the opinion of the AEC, could assist the organisation or branch to address this matter.

Note: Model rules are relevant only to the conduct of elections for office, not for elections for other positions (see section 147).

*Contents of report—difficult rules*

- (4) If the report identifies a rule of the organisation or branch that, in the AEC's opinion, was difficult to interpret or apply in relation to the conduct of the election, the report must also refer to any relevant model rules, which in the opinion of the AEC, could assist the organisation or branch to address this matter.

Note: For model rules, see section 147.

*Subsection (3) relevant only for postal ballots*

- (5) Subsection (3) applies only in relation to elections conducted by postal ballot.

Note: An organisation can obtain an exemption from the requirement to hold elections for office by postal ballot (see section 144).

## 198 Organisation to respond to adverse report on rules

### *Organisation must respond to “difficult rules” report*

- (1) If an organisation or branch is given a post-election report under section 197 that identifies a rule that was difficult to interpret or apply, the organisation or branch must, within 30 days, give a written response to the AEC on that aspect of the report.

Note: This subsection is a civil penalty provision (see section 305).

- (2) The response must specify whether the organisation or branch intends to take any action in relation to the rule, and if so, what action it intends to take.

### *Organisation must make its response available to members*

- (3) The organisation or branch must also make available to its members the part of the report dealing with the difficult rule or rules (the **relevant extract**) and the organisation’s or branch’s response to it.
- (4) The relevant extract must be made available to members no later than the day on which the response is to be made available by the organisation or branch to members.

Note: This subsection is a civil penalty provision (see section 305).

- (5) The response must be made available to members:
- (a) if the response is not to be published in the next edition of the organisation or branch journal—within 30 days after it is given to the AEC; and
  - (b) if the response is to be so published—in the next edition.

Note: This subsection is a civil penalty provision (see section 305).

- (6) Without limiting the ways in which an organisation or branch may comply with subsection (3), it complies if it does all of the following:
- (a) publishes, in the next edition of the organisation or branch journal, a copy of the relevant extract of the report and the organisation’s response;
  - (b) within 30 days after the day on which it gives its response to the AEC:

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- (i) lodges in the Industrial Registry a copy of the relevant extract of the report and a copy of the response given to the AEC under subsection (1), together with a declaration that the organisation or branch will provide a copy of the extract and the organisation's response to any member who so requests; and
  - (ii) gives notice in the next edition of the organisation or branch journal, or in an appropriate newspaper, that a copy of the relevant extract of the report and the organisation's response is available, upon request, from the organisation or branch to each member free of charge;
- (c) meets the requirements of any regulations made for the purposes of this subsection.

*Declaration that report and response will be available*

- (7) A declaration under paragraph (6)(b) must be signed by the secretary or other prescribed officer of the organisation or branch (as the case requires).
- (8) A person must not, in a declaration for the purposes of paragraph (6)(b), make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This subsection is a civil penalty provision (see section 305).

*Definitions*

- (9) In this section:

***appropriate newspaper***, in relation to an organisation or branch, means a newspaper, or newspapers, whose circulation covers the main geographical areas where members of the organisation or branch reside.

***next edition***, in relation to publishing a relevant extract of a post-election report or response in a journal, means the first edition of the journal in which it is reasonably practicable for the report or the response (as the case may be) to be published.

### **199 Ballot papers etc. to be preserved**

- (1) In spite of anything in the rules of an organisation or a branch of an organisation, where an election for an office in the organisation or branch is conducted by the AEC, the organisation or branch, and every officer and employee of the organisation or branch who is able to do so, and the AEC, must take such steps as are necessary to ensure that all ballot papers, envelopes, lists and other documents relevant to the election are preserved and kept by the AEC for one year after the completion of the election.
- (2) In spite of anything in the rules of an organisation or a branch of an organisation, where an election for an office in the organisation or branch is conducted by the organisation or branch, the organisation or branch, and every officer and employee of the organisation or branch who is able to do so, must take such steps as are necessary to ensure that all ballot papers, envelopes, lists and other documents relevant to the election are preserved and kept at the office of the organisation or branch, as the case may be, for one year after the completion of the election.
- (3) An organisation or branch of an organisation commits an offence if the organisation or branch contravenes subsection (1) or (2).

Maximum penalty: 100 penalty units.

- (4) Subsection (3) does not apply if the organisation has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

- (5) An officer or employee of an organisation or branch commits an offence if the officer or employee contravenes subsection (1) or (2).

Maximum penalty: 20 penalty units.

- (6) Subsection (5) does not apply if the officer or employee has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (6), see subsection 13.3(3) of the *Criminal Code*.

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- (7) Offences against subsections (3) and (5) are offences of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Part 3—Inquiries into elections for office**

### **200 Application for inquiry**

*When member of organisation may apply for inquiry*

- (1) If a person who is, or within the preceding period of 12 months has been, a member of an organisation claims that there has been an irregularity in relation to an election for an office in the organisation or a branch of the organisation, the person may make an application for an inquiry by the Federal Court into the matter.

Note: For the meaning of *irregularity*, see section 6.

*When Electoral Commissioner must apply for an inquiry*

- (2) If the Electoral Commissioner believes that the result of an election for an office has been affected by an irregularity in relation to the election, the Electoral Commissioner must make an application for an inquiry by the Federal Court into the matter.

*When Electoral Commissioner may apply for an inquiry*

- (3) If the Electoral Commissioner believes that there has been an irregularity in relation to an election for an office, the Electoral Commissioner may make an application for an inquiry by the Federal Court into the matter.

Note: This section relates only to elections for office. It does not apply to elections for positions other than offices (which can also be conducted under Part 2).

### **201 Instituting of inquiry**

Where:

- (a) an application for an inquiry has been lodged with the Federal Court under section 200; and
- (b) the Court is satisfied that there are reasonable grounds for the application;

the Court must fix a time and place for conducting the inquiry, and may give such directions as it considers necessary to ensure that all persons who are or may be justly entitled to appear at the inquiry

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are notified of the time and place fixed and, where the Court fixes a time and place, the inquiry is taken to have been instituted.

**202 Federal Court may authorise Industrial Registrar to take certain action**

- (1) Where an application for an inquiry has been lodged with the Federal Court under section 200, the Court may authorise the Industrial Registrar to arrange, for the purposes of the inquiry, for a designated Registry official to take any action referred to in subsection (2).
- (2) If a Registry official is designated by the Industrial Registrar for the purposes of subsection (1), the actions that the official may take are as follows:
  - (a) inspecting election documents;
  - (b) for the purposes of any such inspection, entering, with such assistance as he or she considers necessary, any premises used or occupied by the organisation, or a branch of the organisation, concerned in which he or she believes election documents to be;
  - (c) giving a written notice to a person requiring the person to deliver to him or her, within the period and in the manner specified in the notice, any election documents in the possession or under the control of the person;
  - (d) taking possession of any election documents;
  - (e) retaining any election documents delivered to him or her, or of which he or she has taken possession, for such period as is necessary for the purposes of the application and, if proceedings under this Part arise out of the application, until the completion of the proceedings or such earlier time as the Court orders.
- (3) Before authorising any action under subsection (1), the Court must, if it considers that, having regard to all the circumstances, a person should be given an opportunity of objecting to the proposed action, give such an opportunity to the person.
- (4) The period specified in a notice given under paragraph (2)(c) must specify a period of at least 14 days after the notice is given.
- (5) A person commits an offence if the person:



- (a) contravenes a requirement made under paragraph (2)(c); or
- (b) hinders or obstructs the Industrial Registrar, or a person acting on his or her behalf, in the exercise of powers under subsection (2).

Maximum penalty: 30 penalty units.

- (6) Strict liability applies to paragraph (5)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (7) Paragraph (5)(a) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (7), see subsection 13.3(3) of the *Criminal Code*.

- (8) A person is not excused from producing an election document under this section on the ground that the production of the document might tend to incriminate the person or expose the person to a penalty.

- (9) However:

- (a) producing the document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of producing the document;

is not admissible in evidence against the person in criminal proceedings or proceedings that may expose the person to a penalty.

- (10) In this section:

***election documents***, in relation to an election, means ballot papers, envelopes, lists or other documents that have been used in, or are relevant to, the election.

## 203 Designated Registry officials must have identity cards

### *Issue of identity card*

- (1) The Industrial Registrar must issue an identity card to each designated Registry official.
- (2) The identity card must:
  - (a) be in the prescribed form; and

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- (b) include a recent photograph of the official.

*Use of identity card*

- (3) A designated Registry official must carry the identity card at all times when taking action under section 202.
- (4) Before the official takes action under paragraph 202(2)(b) (entering premises), the official must:
  - (a) inform the occupier of the premises that the official is authorised to enter the premises; and
  - (b) show the identity card to the occupier.
- (5) The official is not entitled to enter premises under paragraph 202(2)(b) if he or she has not complied with subsection (4).

*Offence: failing to return identity card*

- (6) A person commits an offence if:
  - (a) the person holds or held an identity card; and
  - (b) the person ceases to be a Registry official; and
  - (c) the person does not, as soon as is practicable after so ceasing, return the identity card to the Industrial Registrar.

Maximum penalty: 1 penalty unit.

- (7) An offence against subsection (6) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (8) Subsection (6) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (8), see subsection 13.3(3) of the *Criminal Code*.

## 204 Interim orders

- (1) Where an inquiry into an election has been instituted, the Federal Court may make one or more of the following orders:
  - (a) an order that no further steps are to be taken in the conduct of the election or in carrying into effect the result of the election;

- (b) an order that a person who has assumed an office, has continued to act in an office, or claims to occupy an office, to which the inquiry relates may act, or continue to act, in the office;
  - (c) an order that a person who has assumed an office, has continued to act in an office, or claims to occupy an office, to which the inquiry relates must not act in the office;
  - (d) an order that a person who holds, or last held before the election, an office to which the inquiry relates may act, or continue to act, in the office;
  - (e) where it considers that an order under paragraph (b) or (d) would not be practicable, would be prejudicial to the efficient conduct of the affairs of the organisation or would be inappropriate having regard to the nature of the inquiry, an order that a member of the organisation or another person specified in the order may act in an office to which the inquiry relates;
  - (f) an order incidental or supplementary to an order under this subsection;
  - (g) an order varying or discharging an order under this subsection.
- (2) Where the Court orders that a person may act, or continue to act, in an office, the person is, while the order remains in force and in spite of anything in the rules of the organisation or a branch of the organisation, to be taken to hold the office.
- (3) An order under this section continues in force, unless expressed to operate for a shorter period or sooner discharged, until the completion of:
- (a) the proceeding concerned in the Court in relation to the election; and
  - (b) all matters ordered by the Court (otherwise than under this section) in the proceeding.

## **205 Procedure at hearing**

- (1) The Federal Court must allow to appear at an inquiry all persons who apply to the Court for leave to appear and who appear to the Court to have an interest in the inquiry, and the Court may order any other person to appear.

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- (2) The persons appearing, or ordered under subsection (1) to appear, at an inquiry are taken to be parties to the proceeding.
- (3) For the purposes of this Part:
  - (a) the procedure of the Court is, subject to this Schedule and the Rules of Court, within the discretion of the Court; and
  - (b) the Court is not bound to act in a formal manner and is not bound by any rules of evidence, but may inform itself on any matter in such manner as it considers just.

**206 Action by Federal Court**

- (1) At an inquiry, the Federal Court must inquire into and determine the question whether an irregularity has happened in relation to the election, and such further questions concerning the conduct and results of the election as the Court considers necessary.
- (2) For the purposes of subsection (1), the Court must determine whether an irregularity has happened on the balance of probabilities.
- (3) In the course of conducting an inquiry, the Court may make such orders (including an order for the recounting of votes) as the Court considers necessary.
- (4) If the Court finds that an irregularity has happened, the Court may, subject to subsection (5), make one or more of the following orders:
  - (a) an order declaring the election, or any step in relation to the election, to be void;
  - (b) an order declaring a person purporting to have been elected not to have been elected, and declaring another person to have been elected;
  - (c) an order directing the Industrial Registrar to make arrangements:
    - (i) in the case of an uncompleted election—for a step in relation to the election (including the calling for nominations) to be taken again and for the uncompleted steps in the election to be taken; or
    - (ii) in the case of a completed election—for a step in relation to the election (including the calling for

nominations) to be taken again or a new election to be held;

- (d) an order (including an order modifying the operation of the rules of the organisation to the extent necessary to enable a new election to be held, a step in relation to an election to be taken again or an uncompleted step in an election to be taken) incidental or supplementary to, or consequential on, any other order under this section.
- (5) The Court must not declare an election, or any step taken in relation to an election, to be void, or declare that a person was not elected, unless the Court is of the opinion that, having regard to the irregularity found, and any circumstances giving rise to a likelihood that similar irregularities may have happened or may happen, the result of the election may have been affected, or may be affected, by irregularities.
- (6) Without limiting the power of the Court to terminate a proceeding before it, the Court may, at any time after it begins an inquiry into an election, terminate the inquiry or the inquiry to the extent that it relates to specified matters.

## **207 Industrial Registrar to make arrangements for conduct of elections etc.**

Where the Federal Court makes an order under paragraph 206(4)(c) in relation to an election, the Industrial Registrar must arrange for the taking of the necessary steps in relation to the election, or for the conduct of the new election, as the case requires, by the AEC.

## **208 Enforcement of orders**

The Federal Court may grant such injunctions (including mandatory injunctions) as it considers necessary for the effective performance of its functions and the enforcement of its orders under this Part.

## **209 Validity of certain acts etc. where election declared void**

- (1) Where the Federal Court declares void the election of a person who has, since the election, purported to act in the office to which the

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person purported to have been elected, or declares such a person not to have been elected:

- (a) subject to a declaration under paragraph (b), all acts done by or in relation to the person that could validly have been done by or in relation to the person if the person had been duly elected are valid; and
  - (b) the Court may declare an act referred to in paragraph (a) to have been void, and, if the Court does so, the act is taken not to have been validly done.
- (2) Where an election is held, or a step in relation to an election is taken, under an order of the Court, the election or step is not invalid merely because of a departure from the rules of the organisation or branch concerned that was required by the order of the Court.

## **Part 4—Disqualification from office**

### **Division 1—Simplified outline of Part**

#### **210 Simplified outline**

<p>This Part imposes certain limitations and requirements on people who hold, or wish to hold, office in an organisation and who have been convicted of a prescribed offence (see Division 2).</p>
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**Division 2—Persons who have been convicted of a prescribed offence**

**211 Simplified outline of Division**

This Division imposes certain limitations and requirements on people who hold, or wish to hold, office in an organisation and who have been convicted of a prescribed offence.

Section 215 sets out the basic limitation for people convicted of a prescribed offence. The remaining sections in this Division deal with the ways the rule in section 215 operates and may be modified.

**212 Meaning of *prescribed offence***

In this Division, a *prescribed offence* is:

- (a) an offence under a law of the Commonwealth, a State or Territory, or another country, involving fraud or dishonesty and punishable on conviction by imprisonment for a period of 3 months or more; or
- (b) an offence against section 51, 72, 105, 185, 191, subsection 193(2), section 194, 195, 199 or subsection 202(5); or
- (c) any other offence in relation to the formation, registration or management of an association or organisation; or
- (d) any other offence under a law of the Commonwealth, a State or Territory, or another country, involving the intentional use of violence towards another person, the intentional causing of death or injury to another person or the intentional damaging or destruction of property.

**213 Meaning of *convicted of a prescribed offence***

For the purposes of this Division, a person:

- (a) is convicted of a prescribed offence whether the person is convicted before or after the commencement of this Part; and



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- (b) is not convicted of a prescribed offence merely because the person is convicted, otherwise than on indictment, of an offence referred to in paragraph 212(c); and
- (c) is not convicted of a prescribed offence referred to in paragraph 212(d) unless the person was sentenced to a term of imprisonment for the offence and either:
  - (i) the person has served, or is serving, a term of imprisonment for the offence; or
  - (ii) the sentence is suspended for a period.

Note: Other terms used in this Part may be defined in section 6.

**213A Meaning of *exclusion period* and *reduced exclusion period***

- (1) For the purposes of this Division, the *exclusion period* in relation to a person who has been convicted of a prescribed offence means a period of 5 years beginning on the latest of the following days:
  - (a) the day on which the person was convicted of the prescribed offence;
  - (b) if the person was sentenced to a term of imprisonment for the offence, the sentence was suspended for a period, and the person is not imprisoned for the offence during the period—the day immediately after the end of the period;
  - (c) if the person serves a term of imprisonment for the offence—the day on which the person is released from prison.
- (2) For the purposes of this Division, a *reduced exclusion period* means a period specified by the Federal Court for the purposes of subparagraph 215(1)(a)(ii) under paragraph 216(2)(b) or 217(2)(b).

**214 Certificate of registrar etc. is evidence of facts**

- (1) A certificate purporting to be signed by the registrar or other proper officer of a federal court, a court of a State or Territory, or a court of another country, stating that a person was convicted by the court of a specified offence on a specified day is, for the purpose of an application made under section 215, 216 or 217, evidence that the person was convicted of the offence on that day.
- (2) A certificate purporting to be signed by the registrar or other proper officer of a federal court, a court of a State or Territory, or a court of another country, stating that a person was acquitted by the court of a specified offence, or that a specified charge against the

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person was dismissed by the court, is, for the purpose of an application made under section 215, 216 or 217, evidence of the facts stated in the certificate.

- (3) A certificate purporting to be signed by the officer in charge of a prison stating that a person was released from the prison on a specified day is, for the purpose of an application made under section 215, 216 or 217, evidence that the person was released from the prison on that day.
- (4) A certificate purporting to be signed by the registrar or other proper officer of a federal court, a court of a State or Territory, or a court of another country, stating that the sentence of a person who was convicted of a specified offence has been suspended for a specified period is, for the purpose of an application made under section 215, 216 or 217, evidence that the sentence was suspended for that period.

**215 Certain persons disqualified from holding office in organisations**

- (1) A person who has been convicted of a prescribed offence is not eligible to be a candidate for an election, or to be elected or appointed, to an office in an organisation unless:
  - (a) on an application made under section 216 or 217 in relation to the conviction of the person for the prescribed offence:
    - (i) the person was granted leave to hold office in organisations; or
    - (ii) the person was refused leave to hold office in organisations but, under paragraph 216(2)(b) or 217(2)(b), the Federal Court specified a reduced exclusion period, and that period has elapsed; or
  - (b) in any other case—the exclusion period has elapsed.
- (2) Where a person who holds an office in an organisation is convicted of a prescribed offence, the person ceases to hold the office at the end of the period of 28 days after the conviction unless, within the period, the person makes an application to the Federal Court under section 216 or 217.

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- (3) If a person who holds an office in an organisation makes an application to the Federal Court under section 216 or 217 and the application is not determined:
  - (a) except in a case to which paragraph (b) applies—within the period of 3 months after the date of the application; or
  - (b) if the Court, on application by the person, has extended the period—within that period as extended;the person ceases to hold the office at the end of the period of 3 months or the period as extended, as the case may be.
- (4) The Court must not, under paragraph (3)(b), extend a period for the purposes of subsection (3) unless:
  - (a) the application for the extension is made before the end of the period of 3 months referred to in paragraph (3)(a); or
  - (b) if the Court has previously extended the period under paragraph (3)(b)—the application for the further extension is made before the end of the period as extended.
- (5) An organisation, a member of an organisation or the Industrial Registrar may apply to the Federal Court for a declaration whether, because of the operation of this section or section 216 or 217:
  - (a) a person is not, or was not, eligible to be a candidate for election, or to be elected or appointed, to an office in the organisation; or
  - (b) a person has ceased to hold an office in the organisation.
- (6) The granting to a person, on an application made under section 216 or 217 in relation to a conviction of the person for a prescribed offence, of leave to hold offices in organisations does not affect the operation of this section or section 216 or 217 in relation to another conviction of the person for a prescribed offence.

**216 Application for leave to hold office in organisations by prospective candidate for office**

- (1) A person who:
  - (a) wants to be a candidate for election, or to be appointed, to an office in an organisation; and
  - (b) within the immediately preceding 5 years:
    - (i) has been convicted of a prescribed offence; or

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- (ii) has been released from prison after serving a term of imprisonment in relation to a conviction for a prescribed offence; or
  - (iii) has completed a suspended sentence in relation to a conviction for a prescribed offence;may, subject to subsection (4), apply to the Federal Court for leave to hold office in organisations.
- (2) Where a person makes an application under subsection (1), the Court may:
  - (a) grant the person leave to hold office in organisations; or
  - (b) refuse the person leave to hold office in organisations and specify, for the purposes of subsection 215(1), a period of less than 5 years beginning on the latest of the following days:
    - (i) the day on which the person was convicted of the prescribed offence;
    - (ii) if the person was sentenced to a term of imprisonment for the offence, the sentence was suspended for a period, and the person is not imprisoned for the offence during the period—the day immediately after the end of the period;
    - (iii) if the person serves a term of imprisonment for the offence—the day on which the person is released from prison.
  - (c) refuse a person leave to hold office in organisations.
- (3) A person who:
  - (a) holds an office in an organisation; and
  - (b) is convicted of a prescribed offence; and
  - (c) on an application made under subsection (1) in relation to the conviction for the prescribed offence, is, under paragraph (2)(b) or (c), refused leave to hold office in organisations;ceases to hold the office in the organisation.
- (4) A person is not entitled to make an application under this section in relation to the person's conviction for a prescribed offence if the person has previously made an application under this section or under section 217 in relation to the conviction.

**217 Application for leave to hold office in organisations by office holder**

- (1) Where a person who holds an office in an organisation is convicted of a prescribed offence, the person may, subject to subsection (4), within 28 days after the conviction, apply to the Federal Court for leave to hold office in organisations.
- (2) Where a person makes an application under subsection (1) for leave to hold office in organisations, the Court may:
  - (a) grant the person leave to hold office in organisations; or
  - (b) refuse the person leave to hold office in organisations and specify, for the purposes of subsection 215(1), a period of less than 5 years beginning on the latest of the following days:
    - (i) the day on which the person was convicted of the prescribed offence;
    - (ii) if the person was sentenced to a term of imprisonment for the offence, the sentence was suspended for a period, and the person is not imprisoned for the offence during the period—the day immediately after the end of the period;
    - (iii) if the person serves a term of imprisonment for the offence—the day on which the person is released from prison.
  - (c) refuse the person leave to hold office in organisations.
- (3) A person who, on an application made under subsection (1), is, under paragraph (2)(b) or (c), refused leave to hold office in organisations ceases to hold the office concerned.
- (4) A person is not entitled to make an application under this section in relation to the person's conviction for a prescribed offence if the person has previously made an application under this section or section 216 in relation to the conviction.

**218 Federal Court to have regard to certain matters**

For the purposes of exercising the power under section 216 or 217 to grant or refuse leave, to a person who has been convicted of a prescribed offence, to hold office in organisations, the Federal Court must have regard to:

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- (a) the nature of the prescribed offence; and
- (b) the circumstances of, and the nature of the person's involvement in, the commission of the prescribed offence; and
- (c) the general character of the person; and
- (d) the fitness of the person to be involved in the management of organisations, having regard to the conviction for the prescribed offence; and
- (e) any other matter that, in the Court's opinion, is relevant.

**219 Action by Federal Court**

- (1) The Federal Court may, in spite of anything in the rules of any organisation concerned, make such order to give effect to a declaration made under subsection 215(5) as it considers appropriate.
- (2) Where an application is made to the Court under subsection 215(5):
  - (a) the person whose eligibility, or whose holding of office, is in question must be given an opportunity of being heard by the Court; and
  - (b) if the application is made otherwise than by the organisation concerned—the organisation must be given an opportunity of being heard by the Court.
- (3) Where an application is made to the Court under section 216 or 217, the organisation concerned must be given an opportunity of being heard by the Court.

**220 Part not to affect spent convictions scheme**

Nothing in this Part affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions relieving persons from requirements to disclose spent convictions).

## **Chapter 8—Records and accounts**

### **Part 1—Simplified outline of Chapter**

#### **229 Simplified outline**

This Chapter deals with records that must be kept by organisations, and imposes obligations in relation to organisations' financial affairs.

Part 2 requires an organisation to keep membership records and lists of office-holders. Copies of these must be lodged with the Industrial Registrar. Details of some types of loans, grants and donations made by the organisation must also be lodged with the Industrial Registrar.

Part 3 sets out the requirements that are placed on organisations in relation to financial records, accounting and auditing.

Part 4 deals with access to organisations' books.

## **Part 2—Records to be kept and lodged by organisations**

### **230 Records to be kept and lodged by organisations**

(1) An organisation must keep the following records:

- (a) a register of its members, showing the name and postal address of each member and showing whether the member became a member under an agreement entered into under rules made under subsection 151(1);
- (b) a list of the offices in the organisation and each branch of the organisation;
- (c) a list of the names, postal addresses and occupations of the persons holding the offices;
- (d) such other records as are prescribed.

Note: This subsection is a civil penalty provision (see section 305).

(2) An organisation must:

- (a) enter in the register of its members the name and postal address of each person who becomes a member, within 28 days after the person becomes a member;
- (b) remove from that register the name and postal address of each person who ceases to be a member under the rules of the organisation, within 28 days after the person ceases to be a member; and
- (c) enter in that register any change in the particulars shown on the register, within 28 days after the matters necessitating the change become known to the organisation.

Note 1: This subsection is a civil penalty provision (see section 305).

Note 2: An organisation may also be required to make alterations to the register of its members under other provisions of the Schedule (see, for example, sections 170 and 172).

### **231 Certain records to be held for 7 years**

- (1) An organisation must keep a copy of its register of members as it stood on 31 December in each year. The organisation must keep the copy for the period of 7 years after the 31 December concerned.



- (2) The regulations may provide that an organisation must also keep a copy of the register, or a part of the register, as it stood on a prescribed day. The organisation must keep the copy for the period of 7 years after the prescribed day.

Note: This section is a civil penalty provision (see section 305).

### **232 Offence to interfere with register or copy**

- (1) A person commits an offence if:
- (a) the person does an act; and
  - (b) the act results in the destruction or defacement of, or other interference with, a register of members or a copy of such a register; and
  - (c) either:
    - (i) the register of members is required to be kept by an organisation under paragraph 230(1)(a); or
    - (ii) the copy is required to be kept by an organisation under section 231.

Maximum penalty: 20 penalty units.

- (2) Strict liability applies to paragraph (1)(c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **233 Obligation to lodge information in Industrial Registry**

- (1) An organisation must lodge in the Industrial Registry once in each year, at such time as is prescribed:
- (a) a declaration signed by the secretary or other prescribed officer of the organisation certifying that the register of its members has, during the immediately preceding calendar year, been kept and maintained as required by paragraph 230(1)(a) and subsection 230(2); and
  - (b) a copy of the records required to be kept under paragraphs 230(1)(b), (c) and (d), certified by declaration by the secretary or other prescribed officer of the organisation to be a correct statement of the information contained in those records.
- (2) An organisation must, within the prescribed period, lodge in the Industrial Registry notification of any change made to the records

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required to be kept under paragraphs 230(1)(b), (c) and (d), certified by declaration signed by the secretary or other prescribed officer of the organisation to be a correct statement of the changes made.

- (3) A person must not, in a declaration for the purposes of this section, make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This section is a civil penalty provision (see section 305).

### 234 Storage of records

- (1) Subject to subsections (2) and (5), the records kept by an organisation under sections 230 and 231 must be kept at the office of the organisation.
- (2) A record referred to in subsection (1) may, so far as it relates to a branch of the organisation, be kept in a separate part or section at the office of the branch.
- (3) An organisation may apply to a Registrar for permission to keep the whole or a specified part of a record referred to in subsection (1) at specified premises instead of at the office of the organisation or branch.
- (4) A Registrar may, by signed instrument, grant the permission if the Registrar is satisfied that the record or the specified part of the record:
- (a) will be under the effective control of the organisation or branch; and
  - (b) will, in the case of a register of members, be available for inspection in accordance with section 235.
- (5) While a permission under subsection (4) is in force, a record referred to in the permission may, to the extent specified in the permission, be kept at the premises specified in the permission.

### 235 Registrar may authorise access to certain records

- (1) A person (the *authorised person*) authorised by a Registrar may inspect, and make copies of, or take extracts from, the records kept by an organisation under sections 230 and 231 (the *records*) at such times as the Registrar specifies.

- (2) An organisation must cause its records to be available, at all relevant times, for the purposes of subsection (1) to the authorised person.

Note: This subsection is a civil penalty provision (see section 305).

- (3) Without limiting the ways in which an organisation can comply with subsection (2), it complies if it makes the records available to the authorised person in a form agreed to by the authorised person.

Note: For example, the authorised person could agree to the organisation providing him or her with a hard copy or with a floppy disk, or to transmitting a copy of the register (or the relevant part) to a specified e-mail address.

## **236 Registrar may direct organisation to deliver copy of records**

### *Register kept under section 230*

- (1) Where:

- (a) a member of an organisation requests a Registrar to give a direction under this subsection; and
- (b) the Registrar is satisfied:
  - (i) that the member has been refused access to the register required to be kept under section 230, or part of it, at the office or premises where the register or part is kept; or
  - (ii) that there are other grounds for giving a direction under this subsection;

the Registrar may direct the organisation to deliver to the Registrar a copy of the relevant records certified by declaration by the secretary or other prescribed officer of the organisation to be, as at a day specified in the certificate that is not more than 28 days before the first-mentioned day, a correct statement of the information contained in the register, for the member to inspect at a specified registry, and the organisation must comply with the direction.

Note: This subsection is a civil penalty provision (see section 305).

### *Copy kept under section 231*

- (2) Where:

- (a) a member of an organisation requests a Registrar to give a direction under this subsection; and

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(b) the Registrar is satisfied that:

- (i) the member has been refused access to the copy of the register required to be kept under section 231; and
- (ii) the member has reasonable grounds for seeking access to the copy;

the Registrar may direct the organisation to deliver to the Registrar a copy of the copy, and the organisation must comply with the direction.

Note: This subsection is a civil penalty provision (see section 305).

- (3) A direction of the Registrar given under this section must be in writing and must specify the period within which the relevant copy must be delivered to the Registrar. The period must not be less than 14 days after the direction is given.
- (4) A copy of a record delivered under subsection (1) or (2) may be in the form of a hard copy or, if the Registrar agrees, in electronic form.
- (5) Where a Registrar receives a copy of a document from an organisation under this section, the Registrar may, if the Registrar considers it appropriate in the circumstances, provide a copy of that document to a member of the organisation.

**237 Organisations to notify particulars of loans, grants and donations**

- (1) An organisation must, within 90 days after the end of each financial year (or such longer period as the Registrar allows), lodge in the Industrial Registry a statement showing the relevant particulars in relation to each loan, grant or donation of an amount exceeding \$1,000 made by the organisation during the financial year.

Note: This subsection is a civil penalty provision (see section 305).

- (2) A statement lodged in the Industrial Registry under subsection (1) must be signed by an officer of the organisation.
- (3) An organisation must not, in a statement under subsection (1), make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This subsection is a civil penalty provision (see section 305).

- (4) A statement lodged in the Industrial Registry under subsection (1) may be inspected at any registry, during office hours, by a member of the organisation concerned.
- (5) The relevant particulars, in relation to a loan made by an organisation, are:
  - (a) the amount of the loan; and
  - (b) the purpose for which the loan was required; and
  - (c) the security given in relation to the loan; and
  - (d) except where the loan was made to relieve a member of the organisation, or a dependant of a member of the organisation, from severe financial hardship—the name and address of the person to whom the loan was made and the arrangements made for the repayment of the loan.
- (6) The relevant particulars, in relation to a grant or donation made by an organisation, are:
  - (a) the amount of the grant or donation; and
  - (b) the purpose for which the grant or donation was made; and
  - (c) except where the grant or donation was made to relieve a member of the organisation, or a dependant of a member of the organisation, from severe financial hardship—the name and address of the person to whom the grant or donation was made.
- (7) Where an organisation is divided into branches:
  - (a) this section applies in relation to the organisation as if loans, grants or donations made by a branch of the organisation were not made by the organisation; and
  - (b) this section applies in relation to each of the branches as if the branch were itself an organisation.
- (8) For the purposes of the application of this section in accordance with subsection (7) in relation to a branch of an organisation, the members of the organisation constituting the branch are taken to be members of the branch.

## **Part 3—Accounts and audit**

### **Division 1—Preliminary**

#### **238 Simplified outline**

This Part sets out the requirements that are placed on organisations in relation to financial records, accounting and auditing.

It provides for reports to be provided on the basis of reporting units. A reporting unit may be the whole of an organisation or one or more branches of an organisation.

Division 2 provides for the reporting units.

Division 3 sets out the accounting obligations for reporting units.

Division 4 provides for auditors to be appointed and sets out the powers and duties of the auditors and the duties that others have in relation to auditors.

Division 5 sets out the reporting requirements that reporting units must comply with.

Division 6 provides for reduced reporting requirements to apply in particular cases.

Division 7 provides for members' access to the financial records of reporting units.

#### **239 Part only applies to financial years starting after registration**

This Part does not apply, in relation to an association that becomes registered as an organisation under this Schedule, in relation to any financial year before the first financial year of the organisation that begins after the date of registration.

## **240 Financial years—change in financial year**

Where the rules of an organisation change the period constituting the financial year of the organisation, the period between:

- (a) the commencement of the first financial year after the change; and
- (b) the end of the preceding financial year;

is to be taken, for the purposes of this Part, to be a financial year.

## **241 Exemptions from certain Australian Accounting Standards**

- (1) The Industrial Registrar may, by written notice, determine that particular Australian Accounting Standards do not apply in relation to an organisation or to a class of organisations.
- (2) In deciding whether to determine that a particular Australian Accounting Standard does not apply in relation to an organisation or organisations, the Registrar is to have regard to the cost to the organisation or organisations of complying with the standard and the information needs of the members of the organisation or organisations.

## Division 2—Reporting units

### 242 What is a reporting unit?

- (1) The requirements of this Part apply in relation to reporting units. A reporting unit may be the whole of an organisation or a part of an organisation.

#### *Organisations not divided into branches*

- (2) Where an organisation is not divided into branches, the **reporting unit** is the whole of the organisation.

#### *Organisations divided into branches*

- (3) Where an organisation is divided into branches, each branch will be a **reporting unit** unless a certificate issued by the Industrial Registrar stating that the organisation is, for the purpose of compliance with this Part, divided into reporting units on an alternative basis (see section 245) is in force.
- (4) The alternative reporting units are:
  - (a) the whole of the organisation; or
  - (b) a combination of 2 or more branches of the organisation.Each branch of an organisation must be in one, and only one, reporting unit.
- (5) For the purposes of this Part, so much of an organisation that is divided into branches as would not, apart from this subsection, be included in any branch, is taken to be a branch of the organisation.

### 243 Designated officers

A **designated officer** is an officer of:

- (a) in the case of a reporting unit that is the whole of an organisation—the organisation; or
- (b) in any other case—a branch, or one of the branches, that constitutes the reporting unit;

who, under the rules of the reporting unit, is responsible (whether alone or with others) for undertaking the functions necessary to enable the reporting unit to comply with this Part.



**244 Members, staff and journals etc. of reporting units**

- (1) For the purposes of the application of this Part in relation to a reporting unit that is the whole of an organisation:
  - (a) the members of the organisation are taken to be members of the reporting unit; and
  - (b) employees of the organisation are taken to be employees of the reporting unit; and
  - (c) the rules of the organisation are taken to be the rules of the reporting unit; and
  - (d) the financial affairs and records of the organisation are taken to be the financial affairs and records of the reporting unit; and
  - (e) conduct and activities of the organisation are taken to be conduct and activities of the reporting unit; and
  - (f) a journal published by the organisation is taken to be a journal published by the reporting unit.
- (2) For the purposes of the application of this Part in relation to a reporting unit that is not the whole of an organisation:
  - (a) the members of the organisation constituting the branch or branches that make up the reporting unit are taken to be members of the reporting unit; and
  - (b) employees of the organisation employed in relation to the branch or branches that make up the reporting unit (whether or not they are also employed in relation to any other branch) are taken to be employees of the reporting unit; and
  - (c) if the reporting unit consists of one branch—the rules of the branch are taken to be the rules of the reporting unit; and
  - (d) if the reporting unit consists of more than one branch—the rules of the branches (including any rules certified under section 246, or determined under section 247, for the purpose of giving effect to the establishment of the reporting unit) are taken to be the rules of the reporting unit; and
  - (e) the financial affairs and records of the branch or branches that make up the reporting unit are taken to be the financial affairs and records of the reporting unit; and
  - (f) conduct and activities of the branch or branches that make up the reporting unit are taken to be conduct and activities of the reporting unit; and

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- (g) if the reporting unit consists of one branch—a journal published by the branch is taken to be a journal published by the reporting unit; and
- (h) a journal published by the organisation is taken to be a journal published by the reporting unit.

**245 Determination of reporting units**

- (1) The Industrial Registrar may issue to an organisation that is divided into branches a certificate stating that the organisation is, for the purpose of compliance with this Part, to be divided into reporting units on an alternative basis (as mentioned in subsection 242(3)).
- (2) A certificate may be issued on application by an organisation or at the initiative of the Registrar.

**246 Determination of reporting units—application by organisation**

- (1) An application by an organisation for a certificate under section 245 must:
  - (a) be in accordance with the regulations; and
  - (b) include an application for the Industrial Registrar to certify such alterations to the rules of the organisation as are required to give effect to the establishment of the proposed reporting units.

Note: Examples of the alterations that may be required are:

- (a) alterations to designate officers from the branches to be the committee of management for the reporting unit for the purpose of complying with this Part; and
  - (b) alterations to designate officers from the branches to undertake such duties as are necessary for the purpose of enabling the reporting unit to comply with this Part.
- (2) Where an organisation applies for a certificate, the Industrial Registrar must issue the certificate and certify the rule alterations if the Registrar is satisfied that:
  - (a) the level of financial information that would be available to members under the proposed division into reporting units would be adequate and would be relevant to them; and
  - (b) the alterations to the rules:

- (i) comply with, and are not contrary to, this Schedule, the Workplace Relations Act, awards, certified agreements or old IR agreements; and
- (ii) are not otherwise contrary to law; and
- (iii) have been made under the rules of the organisation.

#### **247 Determination of reporting units—Industrial Registrar initiative**

- (1) The Industrial Registrar may only issue a certificate under section 245 on his or her initiative if the Registrar:
  - (a) is satisfied that, to improve compliance with the accounting, auditing and reporting requirements of this Part, it is most appropriate for the organisation to be divided into reporting units on the basis set out in the certificate; and
  - (b) is satisfied that the level of financial information that would be available to members under the proposed division into reporting units would be adequate and would be relevant to them; and
  - (c) has complied with the prescribed procedure.
- (2) Where, in the Industrial Registrar's opinion, the rules of an organisation need to be altered to give effect to the establishment of the proposed reporting units under subsection (1), the Industrial Registrar may, by instrument, after giving the organisation an opportunity, as prescribed, to be heard on the matter, determine such alterations of the rules as are, in the Industrial Registrar's opinion, necessary to give effect to the establishment of the proposed reporting units.

#### **248 Determination of reporting units—years certificate applies to**

A certificate issued under section 245 is in force, and has effect according to its terms, in relation to:

- (a) the first financial year starting after the certificate is issued; and
- (b) each subsequent financial year unless, before the start of the financial year, the certificate is revoked under section 249.

**249 Determination of reporting units—revocation of certificates**

- (1) The Industrial Registrar may at any time, by written notice, revoke a certificate issued to an organisation under section 245.
- (2) If a certificate is revoked, each branch will be a reporting unit.
- (3) A certificate may be revoked on application by an organisation or at the initiative of the Registrar.
- (4) An application by an organisation for the revocation of a certificate must:
  - (a) be in accordance with the regulations; and
  - (b) include an application for the Industrial Registrar to certify such alterations to the rules of the organisation as are required to give effect to each branch being a reporting unit.
- (5) Where an organisation applies for a revocation, the Industrial Registrar must revoke the certificate and certify the rule alterations if the Registrar is satisfied that:
  - (a) the level of financial information that would be available to members with each branch being a reporting unit would be adequate and would be relevant to them; and
  - (b) the alterations to the rules:
    - (i) comply with, and are not contrary to, this Schedule, the Workplace Relations Act, awards, certified agreements or old IR agreements; and
    - (ii) are not otherwise contrary to law; and
    - (iii) have been made under the rules of the organisation.
- (6) The Industrial Registrar may only revoke a certificate on his or her initiative if the Registrar:
  - (a) is satisfied that, to improve compliance with the accounting, auditing and reporting requirements of this Part, it is most appropriate for each branch to be a reporting unit; and
  - (b) has complied with the prescribed procedure.
- (7) Where:
  - (a) the Industrial Registrar intends to revoke a certificate on his or her own initiative; and

- (b) in the Registrar's opinion, the rules of an organisation need to be altered to give effect to each branch being a reporting unit;

the Registrar may, by instrument, after giving the organisation an opportunity, as prescribed, to be heard on the matter, determine such alterations of the rules as are, in the Registrar's opinion, necessary to give effect to each branch being a reporting unit.

## **250 Determination of reporting units—rule alterations**

- (1) An alteration to rules under section 246, 247 or 249 takes effect on the day that it is certified or determined.
- (2) To avoid doubt, changes in rules under those sections may include changes to the duties of an office (even if during a particular term of office).

## **251 Determination of reporting units—later certificate revokes earlier certificate**

A certificate issued to an organisation under section 245 is taken to be revoked if a later certificate is issued to the organisation under section 245.

## **Division 3—Accounting obligations**

### **Subdivision A—General obligations**

#### **252 Reporting unit to keep proper financial records**

- (1) A reporting unit must:
  - (a) keep such financial records as correctly record and explain the transactions and financial position of the reporting unit, including such records as are prescribed; and
  - (b) keep its financial records in such a manner as will enable a general purpose financial report to be prepared from them under section 253; and
  - (c) keep its financial records in such a manner as will enable the accounts of the reporting unit to be conveniently and properly audited under this Part.
- (2) Where an organisation consists of 2 or more reporting units, the financial records for each of the reporting units must, as far as practicable, be kept in a consistent manner.

Note 1: This would involve, for example, the adoption of consistent accounting policies and a common chart of accounts for all reporting units in the organisation.

Note 2: This requirement is subject to subsection (4) which allows reporting units to keep some records on a cash basis.
- (3) Financial records of an organisation may, so far as they relate to the income and expenditure of the organisation, be kept on a cash basis or accrual basis, at the option of the organisation.
- (4) If an organisation keeps the financial records referred to in subsection (1) on an accrual basis, it may keep the financial records for its membership subscriptions separately on a cash basis.
- (5) An organisation must retain the financial records kept under subsection (1) for a period of 7 years after the completion of the transactions to which they relate.

### **253 Reporting unit to prepare general purpose financial report**

- (1) As soon as practicable after the end of each financial year, a reporting unit must cause a general purpose financial report to be prepared, in accordance with the Australian Accounting Standards, from the financial records kept under subsection 252(1) in relation to the financial year.
- (2) The general purpose financial report must consist of:
  - (a) financial statements containing:
    - (i) a profit and loss statement, or other operating statement; and
    - (ii) a balance sheet; and
    - (iii) a statement of cash flows; and
    - (iv) any other statements required by the Australian Accounting Standards; and
  - (b) notes to the financial statements containing:
    - (i) notes required by the Australian Accounting Standards; and
    - (ii) information required by the reporting guidelines (see section 255); and
  - (c) any other reports or statements required by the reporting guidelines (see section 255).
- (3) The financial statements and notes for a financial year must give a true and fair view of the financial position and performance of the reporting unit. This subsection does not affect the obligation for a financial report to comply with the Australian Accounting Standards.

Note 1: This section is a civil penalty provision (see section 305).

Note 2: The Australian Accounting Standards may be modified for the purposes of this Schedule by the regulations.

Note 3: If the financial statements and notes prepared in compliance with the Australian Accounting Standards would not give a true and fair view, additional information must be included in the notes to the financial statements under paragraph (2)(b).

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**254 Reporting unit to prepare operating report**

- (1) As soon as practicable after the end of each financial year, the committee of management of a reporting unit must cause an operating report to be prepared in relation to the financial year.
- (2) The operating report must:
  - (a) contain a review of the reporting unit's principal activities during the year, the results of those activities and any significant changes in the nature of those activities during the year; and
  - (b) give details of any significant changes in the reporting unit's financial affairs during the year; and
  - (c) give details of the right of members to resign from the reporting unit under section 174; and
  - (d) give details (including details of the position held) of any officer or member of the reporting unit who is:
    - (i) a trustee of a superannuation entity or an exempt public sector superannuation scheme; or
    - (ii) a director of a company that is a trustee of a superannuation entity or an exempt public sector superannuation scheme; andwhere a criterion for the officer or member being the trustee or director is that the officer or member is an officer or member of a registered organisation; and
  - (e) contain any other information that the reporting unit considers is relevant; and
  - (f) contain any prescribed information.
- (3) To avoid doubt, the operating report may be prepared by the committee of management or a designated officer.

Note: This section is a civil penalty provision (see section 305).

**Subdivision B—Reporting guidelines**

**255 Reporting guidelines**

- (1) The Industrial Registrar must, by written determination published in the *Gazette*, issue reporting guidelines for the purposes of sections 253 and 270.



- (2) The reporting guidelines for the purposes of section 253 must provide:
- (a) the manner in which reporting units must disclose the total amount paid by the reporting unit during a financial year to employers as consideration for the employers making payroll deductions of membership subscriptions; and
  - (b) the manner in which reporting units must disclose the total amount of legal costs and other expenses related to litigation or other legal matters paid by the reporting unit during a financial year; and
  - (c) details of any information required for the purposes of subparagraph 253(2)(b)(ii) (information in notes to general purpose financial reports); and
  - (d) the form and content of any reports or statements that are required for the purposes of paragraph 253(2)(c) (other reports or statements forming part of the general purpose financial reports).
- (3) The reporting guidelines for the purposes of section 270 must provide:
- (a) the manner in which reporting units must disclose the total amount paid by the reporting unit during a financial year to employers as consideration for the employers making payroll deductions of membership subscriptions; and
  - (b) details of the form and content of the general purpose financial report to be prepared under subsection 270(4).
- (4) Reporting guidelines may also contain such other requirements in relation to the disclosure of information by reporting units as the Industrial Registrar considers appropriate.
- (5) Section 81 of the Workplace Relations Act does not apply in relation to reporting guidelines or the issuing of reporting guidelines.

## **Division 4—Auditors**

### **256 Auditors of reporting units**

- (1) A reporting unit must ensure that there is an auditor of the reporting unit at any time when an auditor is required for the purposes of the operation of this Part in relation to the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

- (2) The position of auditor of a reporting unit is to be held by:
- (a) a person who is an approved auditor; or
  - (b) a firm, at least one of whose members is an approved auditor.
- (3) A person must not accept appointment as auditor of a reporting unit unless:
- (a) the person is an approved auditor; and
  - (b) the person is not an excluded auditor in relation to the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

- (4) A member of a firm must not accept appointment of the firm as auditor of a reporting unit unless:
- (a) at least one member of the firm is an approved auditor; and
  - (b) no member of the firm is an excluded auditor in relation to the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

- (5) A person who holds the position of auditor of a reporting unit must resign the appointment if the person:
- (a) ceases to be an approved auditor; or
  - (b) becomes an excluded auditor in relation to the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

- (6) A member of a firm that holds the position of auditor of a reporting unit must take whatever steps are open to the member to ensure that the firm resigns the appointment if the member:
- (a) ceases to be an approved auditor and is or becomes aware that no other member of the firm is an approved auditor; or

(b) becomes an excluded auditor in relation to the reporting unit;  
or

(c) becomes aware that another member of the firm is an  
excluded auditor in relation to the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

(7) The auditor of a reporting unit must use his or her best endeavours  
to comply with each requirement of this Schedule that is applicable  
to the auditor in that capacity.

## **257 Powers and duties of auditors**

- (1) An auditor of a reporting unit must audit the financial report of the reporting unit for each financial year and must make a report in relation to the year to the reporting unit.
- (2) An auditor, or a person authorised by an auditor for the purposes of this subsection, is:
  - (a) entitled at all reasonable times to full and free access to all records and other documents of the reporting unit relating directly or indirectly to the receipt or payment of money, or to the acquisition, receipt, custody or disposal of assets, by the reporting unit; and
  - (b) entitled to seek from any designated officer, or employee of the reporting unit, such information and explanations as the auditor or authorised person wants for the purposes of the audit.
- (3) If an auditor requests an officer, employee or member of an organisation to produce records or other documents under paragraph (2)(a), the request must:
  - (a) be in writing; and
  - (b) specify the nature of the records or other documents to be produced; and
  - (c) specify how and where the records or other documents are to be produced; and
  - (d) specify a period (of not less than 14 days after the notice is given) within which the records or other documents are to be produced.

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- (4) If an auditor authorises a person for the purposes of subsection (2), the auditor must serve on the reporting unit a notification that sets out the name and address of the person.
- (5) An auditor must, in his or her report, state whether in the auditor's opinion the general purpose financial report is presented fairly in accordance with any of the following that apply in relation to the reporting unit:
  - (a) the Australian Accounting Standards;
  - (b) any other requirements imposed by this Part.If not of that opinion, the auditor's report must say why.
- (6) If the auditor is of the opinion that the general purpose financial report does not so comply, the auditor's report must, to the extent it is practicable to do so, quantify the effect that non-compliance has on the general purpose financial report. If it is not practicable to quantify the effect fully, the report must say why.
- (7) The auditor's report must describe:
  - (a) any defect or irregularity in the general purpose financial report; and
  - (b) any deficiency, failure or shortcoming in respect of the matters referred to in subsection (2) or section 252.
- (8) The form and content of the auditor's report must be in accordance with the Australian Auditing Standards.
- (9) The auditor's report must be dated as at the date that the auditor signs the report and must be given to the reporting unit within a reasonable time of the auditor having received the general purpose financial report.
- (10) An auditor must not, in a report under this section, make a statement if the auditor knows, or is reckless as to whether, the statement is false or misleading.

Note: This subsection is a civil penalty provision (see section 305).
- (11) If:
  - (a) the auditor suspects on reasonable grounds that there has been a breach of this Schedule or reporting guidelines; and
  - (b) the auditor is of the opinion that the matter cannot be adequately dealt with by comment in a report or by reporting

the matter to the committee of management of the reporting unit;

the auditor must immediately report the matter, in writing, to the Industrial Registrar.

Note: This subsection is a civil penalty provision (see section 305).

## **258 Obstruction etc. of auditors**

- (1) An officer, employee or member of an organisation or branch commits an offence if he or she:
- (a) hinders or obstructs the auditor of a reporting unit from taking action under paragraph 257(2)(a); or
  - (b) does not comply with a request under paragraph 257(2)(a) by an auditor of a reporting unit to produce a record or other document in the custody or under the control of the officer, employee or member.

Maximum penalty: 30 penalty units.

- (2) Strict liability applies to paragraph (1)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence to an offence against paragraph (1)(b) if the officer, employee or member had a reasonable excuse for not complying.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (3).

- (4) However, a person is not excused from producing a record or other document under this section on the ground that the production might tend to incriminate the person or expose the person to a penalty.

- (5) However:

- (a) producing the record or other document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the record or other document;

is not admissible in evidence against the person in criminal proceedings or proceedings that may expose the person to a penalty.

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- (6) It is a defence to an offence against subsection (1) if the officer, employee or member did not know, and could not reasonably have known, that the auditor, or the person authorised by the auditor, to whom the charge relates was a person in relation to whom that subsection applied.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (6).

- (7) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the auditor was an auditor.

- (8) In this section:

**auditor** includes a person authorised by the auditor for the purposes of subsection 257(2).

**259 Reporting unit to forward notices etc. to auditor**

A reporting unit must forward to the auditor of the reporting unit any notice of, and any other communication relating to, a meeting of the reporting unit, or the committee of management of the reporting unit, at which the report of the auditor, or any general purpose financial report to which the report relates, are to be presented, being a notice or other communication that a member of the reporting unit, or the committee of management of the reporting unit, as the case may be, would be entitled to receive.

Note: This section is a civil penalty provision (see section 305).

**260 Auditor entitled to attend meetings at which report presented**

- (1) An auditor, or a person authorised by an auditor for the purposes of this section, is entitled to attend, and be heard at, any part of a meeting of a reporting unit, or the committee of management of a reporting unit, at which:
- (a) the report of the auditor, or any general purpose financial report to which the report relates, is to be presented or considered; or
  - (b) there is to be conducted any business of the meeting that relates to:
    - (i) the auditor in that capacity; or

(ii) a person authorised by the auditor, in the capacity of a person so authorised.

- (2) Where an auditor authorises a person for the purposes of this section, the auditor must serve on the reporting unit a notification, which sets out the name and address of the person.
- (3) An officer, employee or member of an organisation or branch commits an offence if he or she hinders or obstructs the auditor of a reporting unit from attending a part of the meeting that the auditor is entitled to attend.

Maximum penalty: 30 penalty units.

- (4) A person commits an offence if:
  - (a) an auditor of a reporting unit attends a part of a meeting that the auditor is entitled to attend; and
  - (b) the person chairs the meeting; and
  - (c) in the course of the part of the meeting, the auditor indicates to the person chairing the meeting that the auditor wishes to be heard; and
  - (d) the person fails, as soon as practicable after having received the indication, to afford to the auditor an opportunity to be heard.

Maximum penalty: 20 penalty units.

- (5) It is a defence to an offence against a subsection of this section if the person did not know, and could not reasonably have known, that the auditor, or the person authorised by the auditor, to whom the charge relates was a person in relation to whom the subsection applied.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (5).

- (6) In a prosecution for an offence against this section, it is not necessary to prove that the defendant knew that the auditor was an auditor.
- (7) In subsections (3) and (4):

**auditor** includes a person authorised by the auditor for the purposes of this section.

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**261 Auditors and other persons to enjoy qualified privilege in certain circumstances**

- (1) An auditor of a reporting unit is not, in the absence of malice, liable to an action for defamation at the suit of a person in relation to a statement that the auditor makes in the course of duties as auditor, whether the statement is made orally or in writing.
- (2) A person is not, in the absence of malice, liable to an action for defamation at the suit of a person in relation to the publishing of a document prepared by an auditor of a reporting unit in the course of duties as auditor and required by or under this Schedule to be lodged with the Industrial Registry.
- (3) This section does not limit or affect any right, privilege or immunity that a defendant has in an action for defamation.

**262 Fees and expenses of auditors**

A reporting unit must pay the reasonable fees and expenses of an auditor of the reporting unit.

**263 Removal of auditor**

- (1) An auditor of a reporting unit may only be removed during the term of appointment of the auditor:
  - (a) where the auditor was appointed by the committee of management of the reporting unit—by resolution passed at a meeting of the committee by an absolute majority of the members of the committee; or
  - (b) where the auditor was appointed by a general meeting of the members of the reporting unit—by resolution passed at a general meeting by a majority of the members of the reporting unit voting at the meeting.
- (2) Written notice of the intention to remove the auditor must be given to each member of the reporting unit. The notice must be provided in accordance with any time limits provided by the rules of the reporting unit, or within a reasonable time before the resolution is moved if no such time limits are provided.

Note: This subsection is a civil penalty provision (see section 305).



- (3) The auditor must be given reasonable notice of the resolution to remove the auditor and must be given the opportunity to:
  - (a) in the case of removal under paragraph (1)(a)—make oral representations to the committee of management; and
  - (b) in any case—make written representations.

Note: This subsection is a civil penalty provision (see section 305).

- (4) If it is proposed to remove the auditor under paragraph (1)(b) and the auditor makes written representations, the auditor may require the reporting unit to provide a copy of the written representations to each member of the reporting unit.
- (5) The reporting unit must comply with a requirement under subsection (4) unless the written representations exceed any limits as to length that are prescribed.

Note: This subsection is a civil penalty provision (see section 305).

## **264 Resignation of auditor**

- (1) An auditor of a reporting unit may resign by giving written notice to the reporting unit.
- (2) The resignation takes effect on the day specified in the notice or, if no day is specified, the day that the notice is given to the reporting unit.
- (3) If the auditor requests the reporting unit to allow the auditor to explain his or her reasons for resigning, the reporting unit must either:
  - (a) distribute to the members of the reporting unit written reasons for resignation prepared by the auditor; or
  - (b) give the auditor the opportunity to explain his or her reasons to a general meeting of the reporting unit.

The committee of management of the reporting unit may choose which method is used.

Note: This subsection is a civil penalty provision (see section 305).

## **Division 5—Reporting requirements**

### **265 Copies of full report or concise report to be provided to members**

- (1) A reporting unit must provide free of charge to its members either:
  - (a) a full report consisting of:
    - (i) a copy of the report of the auditor in relation to the inspection and audit of the financial records of the reporting unit in relation to a financial year; and
    - (ii) a copy of the general purpose financial report to which the report relates; and
    - (iii) a copy of the operating report to which the report relates; or
  - (b) a concise report for the financial year that complies with subsection (3).

Note: This subsection is a civil penalty provision (see section 305).

- (2) A concise report may only be provided if, under the rules of the reporting unit, the committee of management of the reporting unit resolves that a concise report is to be provided.
- (3) A concise report for a financial year consists of:
  - (a) a concise financial report for the year drawn up in accordance with the regulations; and
  - (b) the operating report for the year; and
  - (c) a statement by the auditor:
    - (i) that the concise financial report has been audited; and
    - (ii) whether, in the auditor's opinion, the concise financial report complies with the relevant Australian Accounting Standards; and
  - (d) a copy of anything included under subsection 257(5), (6) or (7) in the auditor's report on the full report; and
  - (e) a statement that the report is a concise report and that a copy of the full report and auditor's report will be sent to the member free of charge if the member asks for them.
- (4) If a member requests a copy of the full report and auditor's report, as mentioned in paragraph (3)(e), the reporting unit must send

those reports to the person within 28 days of the request being made.

Note: This subsection is a civil penalty provision (see section 305).

- (5) The copies referred to in subsection (1) must be provided within:
- (a) if a general meeting of members of the reporting unit to consider the reports is held within 6 months after the end of the financial year—the period starting at the end of the financial year and ending 21 days before that meeting; or
  - (b) in any other case—the period of 5 months starting at the end of the financial year.

A Registrar may, upon application by the reporting unit, extend the period during which the meeting referred to in paragraph (a) may be held, or the period set out in paragraph (b), by no more than one month.

Note: This subsection is a civil penalty provision (see section 305).

- (6) Where a reporting unit publishes a journal of the reporting unit that is available to the members of the reporting unit free of charge, the reporting unit may comply with subsection (1):
- (a) by publishing in the journal the full report; or
  - (b) by preparing a concise report as described in subsection (3) and publishing the concise report in the journal.
- (7) Where a reporting unit consists of 2 or more branches of an organisation and one of those branches publishes a journal of the branch that is available to the members of the branch free of charge, the reporting unit may comply with subsection (1) in relation to those members:
- (a) by publishing in the journal the full report; or
  - (b) by preparing a concise report as described in subsection (3) and publishing the concise report in the journal.

## **266 Full report to be presented to meetings**

- (1) Subject to subsection (2), the reporting unit must cause the full report to be presented to a general meeting of the members of the reporting unit within the period of 6 months starting at the end of the financial year (or such longer period as is allowed by a Registrar under subsection 265(5)).

Note: This subsection is a civil penalty provision (see section 305).

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- (2) If the rules of the reporting unit permit a general meeting to be a series of meetings at different locations, the presenting of the full report to such a series of meetings is taken to be the presenting of the report to a general meeting. The general meeting is taken to have occurred at the time of the last of the meetings in the series.
- (3) If the rules of the reporting unit provide for a specified percentage (not exceeding 5%) of members to be able to call a general meeting of the reporting unit for the purpose of considering the auditor's report, the general purpose financial report and the operating report, the full report may instead be presented to a meeting of the committee of management of the reporting unit that is held within the period mentioned in subsection (1).

**267 Comments by committee members not to be false or misleading**

Where a member of the committee of management of a reporting unit:

- (a) provides to members of the reporting unit; or
- (b) publishes in a journal; or
- (c) presents to a general meeting of the members of the reporting unit or a meeting of the committee of management of the reporting unit;

comments on a matter dealt with in a report, accounts or statements of the kind referred to in subsection 265(1), or in a concise report as described in subsection 265(3), the member must not, in the comments, make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This section is a civil penalty provision (see section 305).

**268 Reports etc. to be lodged in Industrial Registry**

A reporting unit must, within 14 days (or such longer period as a Registrar allows) after the general meeting referred to in section 266, lodge in the Industrial Registry:

- (a) a copy of the full report; and
- (b) if a concise report was provided to members—a copy of the concise report; and
- (c) a certificate by a prescribed designated officer that the documents lodged are copies of the documents provided to

members and presented to a meeting in accordance with section 266.

Note: This section is a civil penalty provision (see section 305).

## **Division 6—Reduced reporting requirements for particular reporting units**

### **269 Reporting units with substantial common membership with State registered bodies**

- (1) This section applies to a reporting unit if there is an industrial association (the *associated State body*) that:
  - (a) is registered or recognised as such an association (however described) under a prescribed State Act; and
  - (b) is, or purports to be, composed of substantially the same members as the reporting unit; and
  - (c) has, or purports to have, officers who are substantially the same as designated officers in relation to the reporting unit.
- (2) A reporting unit is taken to have satisfied this Part if this section applies to the reporting unit and:
  - (a) a Registrar, on the application of the reporting unit, issues a certificate stating that the financial affairs of the reporting unit are encompassed by the financial affairs of the associated State body; and
  - (b) the associated State body has, in accordance with prescribed State legislation, prepared accounts, had those accounts audited, provided a copy of the audited accounts to its members and lodged the audited accounts with the relevant State authority; and
  - (c) the reporting unit has lodged a copy of the audited accounts with the Industrial Registry; and
  - (d) any members of the reporting unit who are not also members of the associated State body have been provided with copies of the accounts at substantially the same time as the members of the reporting unit who are members of the associated State body; and
  - (e) a report under section 254 has been prepared in respect of the activities of the reporting unit and has been provided to members of the reporting unit with the copies of the accounts.

**270 Organisations with income of less than certain amount**

- (1) If, on the application of a reporting unit that is the whole of an organisation made after the end of a financial year, a Registrar is satisfied that the reporting unit's income for the year did not exceed:
  - (a) in the case of a financial year that, because of section 240, is a period other than 12 months—such amount as the Registrar considers appropriate in the circumstances; or
  - (b) in any other case—\$100,000 or such higher amount as is prescribed;the Registrar must issue to the reporting unit a certificate to that effect.
- (2) Where a certificate is issued under subsection (1) in relation to a reporting unit in relation to a financial year:
  - (a) the following provisions of this section apply in relation to the reporting unit in relation to the year; and
  - (b) except as provided in paragraph (c), this Part continues to apply in relation to the reporting unit in relation to the year; and
  - (c) sections 253, 265, 266 and 268 do not apply in relation to the reporting unit in relation to the year.
- (3) This Part (other than this section) applies to the reporting unit in relation to the year as if:
  - (a) a reference to a general purpose financial report prepared or to be prepared under section 253 were a reference to a general purpose financial report prepared under subsection (4) of this section; and
  - (b) the reference in subsection 272(5) to a general purpose financial report prepared under section 253 were a reference to a general purpose financial report prepared under subsection (4) of this section; and
  - (c) the reference in sections 332 and 333 to documents lodged in the Industrial Registry under section 268 were a reference to documents lodged with the Industrial Registry in accordance with subsection (7) of this section.
- (4) Within the prescribed period after the end of the financial year, the reporting unit must cause to be prepared, in accordance with the reporting guidelines, from the financial records kept under

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subsection 252(1) in relation to the year, the general purpose financial report required by those reporting guidelines.

Note: This subsection is a civil penalty provision (see section 305).

- (5) After the making to the reporting unit of the report of the auditor under section 257 in relation to the auditor's inspection and audit of the financial records kept by the reporting unit in relation to the year, and before the end of the financial year immediately following the year, the reporting unit must cause a copy of the report, together with copies of the general purpose financial report to which the auditor's report relates, to be presented to a meeting of the members of the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

- (6) Where a member of a reporting unit requests the reporting unit to provide to the member a copy of the auditor's report and the general purpose financial report, the reporting unit must provide a copy of each of the documents to the member, free of charge, within 14 days after receiving the request.

Note: This subsection is a civil penalty provision (see section 305).

- (7) The reporting unit must, within 90 days (or such longer period as a Registrar allows) after the making to the reporting unit of the report under section 257, lodge with the Registrar copies of the auditor's report and the general purpose financial report together with a certificate by a prescribed designated officer that the information contained in the general purpose financial report is correct.

Note: This subsection is a civil penalty provision (see section 305).

**271 Exemption from this Part of certain reporting units**

- (1) If, on the application of a reporting unit, a Registrar is satisfied, after considering such circumstances (if any) as are prescribed, that the reporting unit did not have any financial affairs in a financial year, the Registrar may issue to the reporting unit a certificate to that effect in respect of the financial year.
- (2) The certificate exempts the reporting unit from the requirements of this Part in respect of the financial year.



- (3) The application must be made to a Registrar within 90 days, or such longer period as the Registrar allows, after the end of the financial year.

## **Division 7—Members’ access to financial records**

### **272 Information to be provided to members or Registrar**

- (1) A member of a reporting unit, or a Registrar, may apply to the reporting unit for specified prescribed information in relation to the reporting unit to be made available to the person making the application.
- (2) The application must be in writing and must specify the period within which, and the manner in which, the information is to be made available. The period must not be less than 14 days after the application is given to the reporting unit.
- (3) A reporting unit must comply with an application made under subsection (1).

Note: This subsection is a civil penalty provision (see section 305).

- (4) A Registrar may only make an application under subsection (1) at the request of a member of the reporting unit concerned, and the Registrar must provide to a member information received because of an application made at the request of the member.
- (5) A general purpose financial report prepared under section 253, a concise report prepared under section 265 and a report prepared under subsection 270(4) must include a notice drawing attention to subsections (1), (2) and (3) of this section and setting out those subsections.

Note: This subsection is a civil penalty provision (see section 305).

- (6) Without limiting the information that may be prescribed under subsection (1), the information prescribed must include details (including the amount) of any fees paid by the reporting unit for payroll deduction services provided by a person who is an employer of:
  - (a) the member making the application for information; or
  - (b) the member at whose request the application was made.

### **273 Order for inspection of financial records**

- (1) On application by a member of a reporting unit, the Commission may make an order:
  - (a) authorising the applicant to inspect the financial records of the reporting unit specified in the order; or
  - (b) authorising another person (whether a member or not) to inspect the financial records of the reporting unit specified in the order on the applicant's behalf.

This subsection is subject to subsections (2) and (3).

- (2) The Commission may only make the order if it is satisfied:
  - (a) that the applicant is acting in good faith; and
  - (b) there are reasonable grounds for suspecting a breach of:
    - (i) a provision of this Part; or
    - (ii) the reporting guidelines; or
    - (iii) a regulation made for the purposes of this Part; or
    - (iv) a rule of a reporting unit relating to its finances or financial administration; and
  - (c) it is reasonable to expect that an examination of the financial records will assist in determining if there is such a breach.
- (3) The Commission may only make an order authorising the inspection of financial records that relate to the suspected breach mentioned in paragraph (2)(b).
- (4) A person authorised to inspect the financial records may make copies of the financial records unless the Commission orders otherwise.

### **274 Frivolous or vexatious applications**

- (1) A person must not make an application under section 273 that is vexatious or without reasonable cause.

Note: This subsection is a civil penalty provision (see section 305).

- (2) If the Commission considers an application under section 273 to be vexatious or without reasonable cause, the Commission must dismiss the application as soon as possible.

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**275 Ancillary orders**

If the Commission makes an order under section 273, the Commission may make any other orders it considers appropriate, including any or all of the following:

- (a) an order limiting the use that a person who inspects the financial records may make of information obtained during the inspection;
- (b) an order limiting the right of a person who inspects the financial records to make copies in accordance with subsection 273(4);
- (c) an order that the reporting unit is not required to provide the names and addresses of its members.

**276 Disclosure of information acquired in inspection**

- (1) An applicant who inspects the financial records under section 273, or a person who inspects the financial records on behalf of an applicant, must not disclose information obtained during the inspection unless the disclosure is to:
  - (a) a Registry official; or
  - (b) the applicant.
- (2) A person who receives information under paragraph (1)(a) or (b) must not disclose the information other than to another person covered by one of those paragraphs.

Note: This section is a civil penalty provision (see section 305).

**277 Reporting unit or committee of management may allow member to inspect books**

The committee of management of a reporting unit, or the reporting unit by a resolution passed at a general meeting, may authorise a member to inspect financial records of the reporting unit.

## **278 Commission to be advised of breaches of Part or rules etc. found during inspection**

- (1) If, as a result of inspecting the financial records of a reporting unit, a person reasonably believes that a breach of:
- (a) a provision of this Part; or
  - (b) the reporting guidelines; or
  - (c) a regulation made for the purposes of this Part; or
  - (d) a rule of a reporting unit relating to its finances or financial administration;

may have occurred, the person must give the Industrial Registry written notice to that effect and give to the Industrial Registry any relevant information obtained during the inspection.

- (2) If the Industrial Registry receives notice under subsection (1) and the Commission is satisfied that there are reasonable grounds for believing that there has been a breach of:
- (a) a provision of this Part; or
  - (b) the reporting guidelines; or
  - (c) a regulation made for the purposes of this Part; or
  - (d) a rule of a reporting unit relating to its finances or financial administration;

the Commission must refer the matter to the Industrial Registrar.

Note: Where a matter is referred, it will be investigated under section 334.

## **279 Constitution of Commission**

For the purposes of this Division, the Commission must be constituted by a Presidential Member.

## Part 4—Access to organisations' books

### 280 Right of access to organisation's books

#### *Right while officer*

- (1) An officer of an organisation or a branch may inspect the books of the organisation at all reasonable times for the purposes of a legal proceeding:
  - (a) to which the officer is a party; or
  - (b) that the officer proposes in good faith to bring; or
  - (c) that the officer has reason to believe will be brought against him or her;

where the officer reasonably believes that the books contain information that is relevant to the proceedings.

#### *Right during 7 years after ceasing to be officer*

- (2) A person who has ceased to be an officer of an organisation or a branch may inspect the books of the organisation at all reasonable times for the purposes of a legal proceeding:
  - (a) to which the person is a party; or
  - (b) that the person proposes in good faith to bring; or
  - (c) that the person has reason to believe will be brought against him or her;

where the person reasonably believes that the books contain information that is relevant to the proceedings. This right continues for 7 years after the person ceased to be an officer of the organisation or the branch.

#### *Right to take copies*

- (3) A person authorised to inspect books under this section for the purposes of a legal proceeding may make copies of the books for the purposes of those proceedings.
- (4) Where a person obtains copies under subsection (3), the organisation is entitled to recover from the person any costs incurred by the organisation in providing the copies.

*Organisation or branch not to refuse access*

- (5) An organisation or branch must allow a person to exercise his or her rights to inspect or take copies of the books under this section.

*Meaning of **books***

- (6) In this section:

**books** includes:

- (a) a register; and
- (b) any other record of information; and
- (c) financial reports or financial records, however compiled, recorded or stored; and
- (d) a document.

## **Chapter 9—Conduct of officers and employees**

### **Part 1—Simplified outline of Chapter**

#### **281 Simplified outline**

This Chapter sets out some of the most significant duties of officers and employees of organisations and branches of organisations. Other duties are imposed by other provisions of this Schedule and other laws (including the general law).

Part 2 sets out the general duties of officers and employees in relation to the financial management of an organisation or a branch of an organisation.



## **Part 2—General duties in relation to the financial management of organisations**

### **Division 1—Preliminary**

#### **282 Simplified outline**

This Part sets out some of the most significant duties of officers and employees of organisations and branches of organisations in relation to the financial management of an organisation or a branch of an organisation.

#### **283 Part only applies in relation to financial management**

This Part only applies in relation to officers and employees of an organisation or a branch of an organisation to the extent that it relates to the exercise of powers or duties of those officers and employees related to the financial management of the organisation or branch.

#### **284 Meaning of *involved***

For the purposes of this Part, a person is *involved* in a contravention if, and only if, the person has:

- (a) aided, abetted, counselled or procured the contravention; or
- (b) induced, whether by threats or promises or otherwise, the contravention; or
- (c) been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
- (d) conspired with others to effect the contravention.

## **Division 2—General duties in relation to the financial management of organisations**

### **285 Care and diligence—civil obligation only**

- (1) An officer of an organisation or a branch must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if he or she:
  - (a) were an officer of an organisation or a branch in the organisation's circumstances; and
  - (b) occupied the office held by, and had the same responsibilities within the organisation or a branch as, the officer.

Note: This subsection is a civil penalty provision (see section 305).

- (2) An officer of an organisation or a branch who makes a judgment to take or not take action in respect of a matter relevant to the operations of the organisation or branch is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if he or she:
  - (a) makes the judgment in good faith for a proper purpose; and
  - (b) does not have a material personal interest in the subject matter of the judgment; and
  - (c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and
  - (d) rationally believes that the judgment is in the best interests of the organisation.

The officer's belief that the judgment is in the best interests of the organisation is a rational one unless the belief is one that no reasonable person in his or her position would hold.

Note: This subsection only operates in relation to duties under this section and their equivalents at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Schedule or under any other laws.

### **286 Good faith—civil obligations**

- (1) An officer of an organisation or a branch must exercise his or her powers and discharge his or her duties:

- (a) in good faith in what he or she believes to be the best interests of the organisation; and
- (b) for a proper purpose.

Note: This subsection is a civil penalty provision (see section 305).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 305).

## **287 Use of position—civil obligations**

- (1) An officer or employee of an organisation or a branch must not improperly use his or her position to:
  - (a) gain an advantage for himself or herself or someone else; or
  - (b) cause detriment to the organisation or to another person.

Note: This subsection is a civil penalty provision (see section 305).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 305).

## **288 Use of information—civil obligations**

- (1) A person who obtains information because he or she is, or has been, an officer or employee of an organisation or a branch must not improperly use the information to:
  - (a) gain an advantage for himself or herself or someone else; or
  - (b) cause detriment to the organisation or to another person.

Note 1: This duty continues after the person stops being an officer or employee of the organisation or branch.

Note 2: This subsection is a civil penalty provision (see section 305).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 305).

## **289 Effect of ratification by members**

- (1) If the members of an organisation ratify or approve a contravention of section 285, 286, 287 or 288, the ratification or approval:

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- (a) does not prevent the commencement of proceedings for a contravention of the section; and
  - (b) does not have the effect that proceedings brought for a contravention of the section must be determined in favour of the defendant.
- (2) If members of an organisation ratify or approve a contravention of section 285, 286, 287 or 288, the Federal Court may take the ratification or approval into account in deciding what order or orders to make under section 306, 307 or 308 in proceedings brought for a contravention of the section. In doing this, it must have regard to:
  - (a) how well-informed about the conduct the members were when deciding whether to ratify or approve the contravention; and
  - (b) whether the members who ratified or approved the contravention were acting for proper purposes.

**290 Compliance with statutory duties**

An officer or employee does not contravene section 286, 287 or 288 by doing an act that another provision of this Schedule or the Workplace Relations Act requires the officer or employee to do.

**291 Interaction of sections 285 to 289 with other laws etc.**

Sections 285 to 289:

- (a) have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of his or her office or employment in relation to an organisation or a branch; and
- (b) do not prevent the commencement of proceedings for a breach of duty or in respect of a liability referred to in paragraph (a).

This section does not apply to subsection 285(2) to the extent to which it operates on the duties at common law and in equity that are equivalent to the requirements of subsection 285(1).

**292 Reliance on information or advice provided by others**

If:

- (a) an officer relies on information, or professional or expert advice, given or prepared by:
    - (i) an employee of the organisation or the branch whom the officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or
    - (ii) a professional adviser or expert in relation to matters that the officer believes on reasonable grounds to be within the person's professional or expert competence; or
    - (iii) another officer in relation to matters within the officer's authority; or
    - (iv) a collective body on which the officer did not serve in relation to matters within the collective body's authority; and
  - (b) the reliance was made:
    - (i) in good faith; and
    - (ii) after making proper inquiry if the circumstances indicated the need for inquiry; and
  - (c) the reasonableness of the officer's reliance on the information or advice arises in proceedings brought to determine whether an officer has performed a duty under this Part or an equivalent duty at common law or in equity;
- the officer's reliance on the information or advice is taken to be reasonable unless the contrary is proved.

### **293 Responsibility for actions of other person**

- (1) If the officers of an organisation or a branch delegate a power under its rules, each of those officers is responsible for the exercise of the power by the person to whom the power was delegated as if the power had been exercised by the officer.
- (2) An officer is not responsible under subsection (1) if:
  - (a) the officer believed on reasonable grounds at all times that the person to whom the power was delegated would exercise the power in conformity with the duties imposed on officers of the organisation or the branch by this Schedule or the Workplace Relations Act; and
  - (b) the officer believed:
    - (i) on reasonable grounds; and

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- (ii) in good faith; and
  - (iii) after making proper inquiry if the circumstances indicated the need for inquiry;
- that the person to whom the power was delegated was reliable and competent in relation to the power delegated.

## **Chapter 10—Civil penalties**

### **Part 1—Simplified outline of Chapter**

#### **304 Simplified outline**

This Chapter provides for civil penalties where specified provisions are contravened.

It sets out the orders that may be made where a contravention has occurred.

It also sets out the relationship with criminal proceedings arising out of the same conduct.

## Part 2—Civil consequences of contravening civil penalty provisions

### 305 Civil penalty provisions

- (1) Subject to this Part, an application may be made to the Federal Court for orders under sections 306, 307 and 308 in respect of conduct in contravention of a civil penalty provision.
- (2) These provisions are the *civil penalty provisions*:
  - (a) subsection 52(1) (declaration about register);
  - (b) subsection 52(3) (false statement);
  - (c) subsection 104(1) (declaration about register);
  - (d) subsection 104(3) (false statement);
  - (e) subsection 151(2) and paragraph 151(11)(a) (lodging membership agreements);
  - (f) subsection 152(3) (lodging assets and liabilities agreements);
  - (g) section 169 (request for statement of membership);
  - (h) subsection 172(1) (removal of non-financial members from register);
  - (i) section 175 (false representation as to membership);
  - (j) section 176 (false representation about resignation);
  - (k) subsection 189(2) (lodging election information);
  - (l) subsection 192(1) (declaration about register);
  - (m) subsection 192(3) (false statement in declaration);
  - (n) subsections 198(1), (4), (5) and (8) (response to post-election report);
  - (o) subsections 230(1) and (2) (records to be kept and lodged by organisations);
  - (p) subsections 231(1) and (2) (records to be held for 7 years);
  - (q) subsections 233(1) and (2) (lodging of information in Registry);
  - (r) subsection 233(3) (false statement about records);
  - (s) subsection 235(2) (access to records);
  - (t) subsections 236(1) and (2) (delivery of records);



- (u) subsection 237(1) (particulars of loans, grants and donations);
  - (v) subsection 237(3) (false statement about loans, grants and donations);
  - (w) sections 253 and 254 (keeping and preparation of accounts);
  - (x) subsection 256(1) (appointment of auditors);
  - (y) subsections 256(3), (4), (5) and (6) (persons not to be auditors);
  - (z) subsections 257(10) and (11) (auditor's report);
  - (za) section 259 (forwarding notices to auditors);
  - (zb) subsections 263(2), (3) and (5) (removal of auditor);
  - (zc) subsection 264(3) (distribution of auditor's reasons for resignation);
  - (zd) subsections 265(1), (4) and (5) and 266(1) and section 267 (accounts, reports etc.);
  - (ze) section 268 (failure to lodge accounts etc.);
  - (zf) subsections 270(4), (5), (6) and (7) (accounts of low income organisations);
  - (zg) subsections 272(3) and (5) (providing information to members);
  - (zh) subsection 274(1) (frivolous or vexatious applications);
  - (zi) section 276 (disclosure of information);
  - (zj) subsections 285(1), 286(1) and (2), 287(1) and (2), and 288(1) and (2) (officers' duties);
  - (zl) subsection 347(1) (provision of rules to members).
- (3) For the purposes of this Part, any contravention of a civil penalty provision by a branch or reporting unit is taken to be a contravention by the organisation of which the branch or reporting unit is part.

### **306 Pecuniary penalty orders that the Federal Court may make**

- (1) In respect of conduct in contravention of a civil penalty provision, the Federal Court may make an order imposing on the person or organisation whose conduct contravened the civil penalty provision a pecuniary penalty of not more than:
- (a) in the case of a body corporate—100 penalty units; or
  - (b) in any other case—20 penalty units.

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- (2) A penalty payable under this section is a civil debt payable to the Commonwealth. The Commonwealth may enforce the order as if it were an order made in civil proceedings against the person, reporting unit or organisation to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

**307 Compensation orders**

*Compensation for damage suffered*

- (1) The Federal Court may order a person to compensate an organisation for damage suffered by the organisation if:
- (a) the person has contravened a civil penalty provision in Part 2 of Chapter 9 in relation to the organisation; and
  - (b) the damage resulted from the contravention.
- The order must specify the amount of the compensation.

*Damage includes profits*

- (2) In determining the damage suffered by the organisation for the purposes of making a compensation order, the Court is to have regard to any profits made by any person resulting from the contravention.

*Recovery of damage*

- (3) A compensation order may be enforced as if it were a judgment of the Court.

**308 Other orders**

- (1) The Federal Court may make such other orders as the Court considers appropriate in all the circumstances of the case.
- (2) Without limiting subsection (1), the orders may include injunctions (including interim injunctions), and any other orders, that the Court thinks necessary to stop the conduct or remedy its effects.
- (3) Orders may be made under this section whether or not orders are also made under section 306 or 307.

### **309 Effect of section 307**

Section 307:

- (a) has effect in addition to, and not in derogation of, any rule of law about the duty or liability of a person because of the person's office or employment in relation to an organisation; and
- (b) does not prevent proceedings from being instituted in respect of such a duty or in respect of such a liability.

### **310 Who may apply for an order**

*Application by Industrial Registrar*

- (1) The Industrial Registrar, or some other person authorised in writing by the Industrial Registrar under this subsection to make the application, may apply for an order under this Part.

*Application by organisation*

- (3) An organisation may apply for a compensation order.
- (4) An organisation may intervene in an application for a pecuniary penalty order or an order under section 308 in relation to the organisation. The organisation is entitled to be heard on all matters other than whether the order should be made.

### **311 Civil proceedings after criminal proceedings**

The Federal Court must not make a pecuniary penalty order against a person or organisation for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

### **312 Criminal proceedings during civil proceedings**

- (1) Proceedings for a pecuniary penalty order against a person or organisation are stayed if:
  - (a) criminal proceedings are started or have already been started against the person or organisation for an offence; and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

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- (2) The proceedings for the order may be resumed if the person or organisation is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

**313 Criminal proceedings after civil proceedings**

Criminal proceedings may be started against a person or organisation for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether an order under this Part has been made against the person or organisation.

**314 Evidence given in proceedings for penalty not admissible in criminal proceedings**

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

**315 Relief from liability for contravention of civil penalty provision**

- (1) In this section:

***eligible proceedings:***

- (a) means proceedings for a contravention of a civil penalty provision; and
- (b) does not include proceedings for an offence.

- (2) If:

- (a) eligible proceedings are brought against a person or organisation; and

- (b) in the proceedings it appears to the Federal Court that the person or organisation has, or may have, contravened a civil penalty provision but that:
  - (i) the person or organisation has acted honestly; and
  - (ii) having regard to all the circumstances of the case, the person or organisation ought fairly to be excused for the contravention;the Court may relieve the person or organisation either wholly or partly from a liability to which the person or organisation would otherwise be subject, or that might otherwise be imposed on the person or organisation, because of the contravention.
- (3) If a person or organisation thinks that eligible proceedings will or may be begun against them, they may apply to the Federal Court for relief.
- (4) On an application under subsection (3), the Court may grant relief under subsection (2) as if the eligible proceedings had been begun in the Court.

### **316 Power to grant relief**

- (1) If:
  - (a) civil proceedings are brought against an officer of an organisation for negligence, default, breach of trust or breach of duty in a capacity as such an officer; and
  - (b) in the proceedings it appears to the court before which the proceedings are taken that:
    - (i) the officer is or may be liable in respect of the negligence, default or breach; and
    - (ii) the officer has acted honestly; and
    - (iii) having regard to all the circumstances of the case (including those connected with the officer's appointment), the officer ought fairly to be excused for the negligence, default or breach;the court may relieve the officer either wholly or partly from liability on the terms that the court thinks appropriate.
- (2) An officer of an organisation who has reason to apprehend that a claim will or might be made against him or her for negligence, default, breach of trust or breach of duty in a capacity as such an

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officer may apply to the Federal Court for relief. On the application, the Court has the same power to relieve the officer as it would have had under subsection (1) if it had been a court before which proceedings against the officer for negligence, default, breach of trust or breach of duty had been brought.

## **Chapter 11—Miscellaneous**

### **Part 1—Simplified outline of Chapter**

#### **317 Simplified outline**

This Chapter deals with a variety of topics.

Part 2 contains provisions validating certain invalidities in relation to registered organisations.

Part 3 provides that if a person is a party to certain kinds of proceedings under the Schedule, the Commonwealth may, in some circumstances, give the person financial assistance. Division 2 of Part 3 contains a rule about the ordering of costs by a court.

Part 4 provides for a Registrar to make inquiries as to compliance with financial accountability requirements and civil penalty provisions. The Registrar may also conduct investigations.

Part 4A provides protection for officers, employees and members of organisations who disclose information about contraventions of this Schedule or this Act.

Part 5 confers jurisdiction on the Federal Court in relation to matters arising under this Schedule.

Part 6 deals with various procedural and administrative matters. It also contains some offence provisions and provisions dealing with certain rights of members of organisations (sections 345, 346 and 347).

Part 7 deals with complementary registration systems.

## Part 2—Validating provisions for organisations

### 318 Definition

In this Part:

*invalidity* includes nullity and also includes but is not limited to any invalidity or nullity resulting from an omission, defect, error, irregularity or absence of a quorum or caused by the fact that:

- (a) a member, or each of 2 or more of the members, of a collective body of an organisation or branch of an organisation, or one of the persons, or each of 2 or more of the persons, purporting to act as the members of such a collective body, or a person, or each of 2 or more persons, holding or purporting to hold an office or position in an organisation or branch:
  - (i) has not been elected or appointed or duly elected or appointed; or
  - (ii) has purported to be elected or appointed by an election or appointment that was a nullity; or
  - (iii) was not entitled to be elected or appointed or to hold office; or
  - (iv) was not a member of the organisation; or
  - (v) was elected or appointed or purported to be elected or appointed, in a case where one or more of the persons who took part in the election or appointment or the purported election or appointment was or were not entitled to do so or was or were not members of the organisation; or
- (b) persons who were not entitled to do so, or were not members of the organisation, took part in the making or purported making or the alteration or purported alteration of the rules of an organisation or branch, as officers or voters or otherwise.



**319 Validation of certain acts done in good faith***Acts relating to elections, appointments, organisation's rules*

- (1) Subject to this section and section 321, all acts done in good faith by a collective body of an organisation or branch of an organisation, or by persons purporting to act as such a collective body, are valid in spite of any invalidity that may later be discovered in:
- (a) the election or appointment of the collective body, any member of the collective body or the persons or any of the persons purporting to act as the collective body; or
  - (b) the making or alteration of a rule of the organisation or branch.

*Acts done by person holding or purporting to hold office*

- (2) Subject to this section and section 321, all acts done in good faith by a person holding or purporting to hold an office or position in an organisation or branch are valid in spite of any invalidity that may later be discovered in:
- (a) the election or appointment of the person; or
  - (b) the making or alteration of a rule of the organisation or branch.

*Meaning of purporting to be member or office holder*

- (3) For the purposes of this section:
- (a) a person is not to be treated as purporting to act as a member of a collective body of an organisation or as the holder of an office or position in an organisation unless the person has, in good faith, purported to be, and has been treated by officers or members of the organisation as being, such a member or the holder of the office or position; and
  - (b) a person is not to be treated as purporting to act as a member of a collective body of a branch of an organisation or as the holder of an office or position in the branch unless the person has, in good faith, purported to be, and has been treated by officers or members of the branch as being, such a member or the holder of the office or position.

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*Meaning of good faith*

(4) For the purposes of this section:

- (a) an act is to be treated as done in good faith until the contrary is proved; and
- (b) a person who has purported to be a member of a collective body of an organisation or branch is to be treated as having done so in good faith until the contrary is proved; and
- (c) knowledge of facts from which an invalidity arises is not of itself to be treated as knowledge that the invalidity exists; and
- (d) an invalidity in:
  - (i) the election or appointment of a collective body of a branch of an organisation or any member of such a collective body; or
  - (ii) the election or appointment of the persons or any of the persons purporting to act as a collective body of a branch; or
  - (iii) the election or appointment of a person holding or purporting to hold an office or position in a branch; or
  - (iv) the making or alteration of a rule of a branch;is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of the members of the committee of management of the branch or to a majority of the persons purporting to act as the committee of management; and
- (e) an invalidity in any other election or appointment or in the making or alteration of a rule to which this section applies is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of the members of the committee of management of the organisation or to a majority of the persons purporting to act as that committee of management.

*Actions to which this section applies*

(5) This section applies:

- (a) to an act whenever done (including an act done before the commencement of this section); and
- (b) to an act done in relation to an association before it became an organisation.

*Certain invalid actions not validated by this section*

- (6) Nothing in this section validates the expulsion or suspension of, or the imposition of a fine or any other penalty on, a member of an organisation that would not have been valid if this section had not been enacted.

*Relationship between this section and Part 3 of Chapter 7*

- (7) Nothing in this section affects the operation of Part 3 of Chapter 7 (Inquiries into elections).

**320 Validation of certain acts after 4 years**

- (1) Subject to this section and section 321, after the end of 4 years from:
  - (a) the doing of an act:
    - (i) by, or by persons purporting to act as, a collective body of an organisation or branch of an organisation and purporting to exercise power conferred by or under the rules of the organisation or branch; or
    - (ii) by a person holding or purporting to hold an office or position in an organisation or branch and purporting to exercise power conferred by or under the rules of the organisation or branch; or
  - (b) the election or purported election, or the appointment or purported appointment of a person, to an office or position in an organisation or branch; or
  - (c) the making or purported making, or the alteration or purported alteration, of a rule of an organisation or branch;

the act, election or purported election, appointment or purported appointment, or the making or purported making or alteration or purported alteration of the rule, is taken to have been done in compliance with the rules of the organisation or branch.
- (2) The operation of this section does not affect the validity or operation of an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar judicial act of the Federal Court or any other court made before the end of the 4 years referred to in subsection (1).

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- (3) This section extends to an act, election or purported election, appointment or purported appointment, and to the making or purported making or alteration or purported alteration of a rule:
  - (a) done or occurring before the commencement of this section; or
  - (b) done or occurring in relation to an association before it became an organisation.

**321 Order affecting application of section 319 or 320**

- (1) Where, on an application for an order under this section, the Federal Court is satisfied that the application of section 319 or 320 in relation to an act would do substantial injustice, having regard to the interests of:
  - (a) the organisation; or
  - (b) members or creditors of the organisation; or
  - (c) persons having dealings with the organisation;the Court must, by order, declare accordingly.
- (2) Where a declaration is made under subsection (1), section 319 or 320, as the case requires, does not apply, and is taken never to have applied, in relation to the act specified in the declaration.
- (3) The Court may make an order under subsection (1) on the application of the organisation, a member of the organisation or any other person having a sufficient interest in relation to the organisation.
- (4) The Court may determine:
  - (a) what notice, summons or rule to show cause is to be given to other persons of the intention to make an application or an order under this section; and
  - (b) whether and how the notice, summons or rule should be given or served and whether it should be advertised in any newspaper.

- (5) In this section:

*act* includes an election or purported election, appointment or purported appointment, and the making or purported making or alteration or purported alteration of a rule.

**322 Federal Court may make orders in relation to consequences of invalidity**

- (1) An organisation, a member of an organisation or any other person having a sufficient interest in relation to an organisation may apply to the Federal Court for a determination of the question whether an invalidity has occurred in:
  - (a) the management or administration of the organisation or a branch of the organisation; or
  - (b) an election or appointment in the organisation or a branch of the organisation; or
  - (c) the making or alteration of the rules of the organisation or a branch of the organisation.
- (2) On an application under subsection (1), the Court may make any declaration it considers proper.
- (3) Where, in a proceeding under subsection (1), the Court finds that an invalidity of the kind referred to in that subsection has occurred, the Court may make any order it considers appropriate:
  - (a) to rectify the invalidity or cause it to be rectified; or
  - (b) to negative, modify or cause to be modified the consequences in law of the invalidity; or
  - (c) to validate any act, matter or thing rendered invalid by or because of the invalidity.
- (4) Where an order is made under subsection (3), the Court may give such ancillary or consequential directions as it considers appropriate.
- (5) The Court must not make an order under subsection (3) unless it is satisfied that the order would not do substantial injustice to:
  - (a) the organisation; or
  - (b) any member or creditor of the organisation; or
  - (c) any person having dealings with the organisation.
- (6) The Court may determine:
  - (a) what notice, summons or rule to show cause is to be given to other persons of the intention to make an application or an order under this section; and

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- (b) whether and how the notice, summons or rule should be given or served and whether it should be advertised in any newspaper.
- (7) This section applies:
  - (a) to an invalidity whenever occurring (including an invalidity occurring before the commencement of this section); and
  - (b) to an invalidity occurring in relation to an association before it became an organisation.

**323 Federal Court may order reconstitution of branch etc.**

- (1) An organisation, a member of an organisation or any other person having a sufficient interest in relation to an organisation may apply to the Federal Court for a declaration that:
  - (a) a part of the organisation, including:
    - (i) a branch or part of a branch of the organisation; or
    - (ii) a collective body of the organisation or a branch of the organisation;has ceased to exist or function effectively and there are no effective means under the rules of the organisation or branch by which it can be reconstituted or enabled to function effectively; or
  - (b) an office or position in the organisation or a branch of the organisation is vacant and there are no effective means under the rules of the organisation or branch to fill the office or position;and the Court may make a declaration accordingly.
- (2) Where the Court makes a declaration under subsection (1), the Court may, by order, approve a scheme for the taking of action by a collective body of the organisation or a branch of the organisation, or by an officer or officers of the organisation or a branch of the organisation:
  - (a) for the reconstitution of the branch, the part of the branch or the collective body; or
  - (b) to enable the branch, the part of the branch or the collective body to function effectively; or
  - (c) for the filling of the office or position.

- (3) Where an order is made under this section, the Court may give any ancillary or consequential directions it considers appropriate.
- (4) The Court must not make an order under this section unless it is satisfied that the order would not do substantial injustice to the organisation or any member of the organisation.
- (5) The Court may determine:
  - (a) what notice, summons or rule to show cause is to be given to other persons of the intention to make an application or an order under this section; and
  - (b) whether and how the notice, summons or rule should be given or served and whether it should be advertised in any newspaper.
- (6) An order or direction of the Court under this section, and any action taken in accordance with the order or direction, has effect in spite of anything in the rules of the organisation or a branch of the organisation.
- (7) The Court must not under this section approve a scheme involving provision for an election for an office unless the scheme provides for the election to be held by a direct voting system or a collegiate electoral system.

## **Part 3—Financial assistance and costs**

### **Division 1—Financial assistance**

#### **324 Authorisation of financial assistance**

- (1) Subject to this Division, the Minister may, on application made by a person under subsection (2), authorise payment by the Commonwealth to the person of financial assistance in relation to the whole or part of the person's relevant costs, if the Minister is satisfied:
  - (a) that hardship is likely to be caused to the person if the application is refused; and
  - (b) that in all the circumstances it is reasonable that the application should be granted.
- (2) An application may be made to the Minister for financial assistance under this Division by the following persons (other than organisations) in the following circumstances:
  - (a) a person who made an application under section 163, 164 or 164A, where the Federal Court granted a rule calling on another person, or an organisation, to show cause why an order should not be made under section 163, 164 or 164A in relation to the other person or organisation;
  - (b) a person who was a party, otherwise than as an applicant, to a proceeding under section 163, 164 or 164A;
  - (c) a person who made an application under section 164, where the Federal Court made an interim order under subsection 164(4);
  - (d) a person who applied for an inquiry into an election, where the Federal Court found that an irregularity happened;
  - (e) a person who applied for an inquiry into an election, where the Federal Court certified under subsection 325(1) that the person acted reasonably in applying;
  - (f) a person who incurred costs in relation to an inquiry into an election, other than a person who applied for the inquiry;
  - (g) a member of an organisation who made an application under subsection 215(5), where the Federal Court declared that the person the subject of the application was not eligible to be a



candidate for election or to be elected or appointed or had ceased to hold office;

- (h) a member of an organisation who made an application under subsection 215(5), where the Federal Court certified under subsection 325(2) that the member acted reasonably in making the application;
  - (j) a person who incurred costs in relation to an application made under subsection 215(5), other than the person who made the application;
  - (k) a person who made an application to the Federal Court under section 216 or 217, where, on the application, the Federal Court granted the person leave under paragraph 216(2)(a) or 217(2)(a) or refused the person leave under paragraph 216(2)(b) or 217(2)(b);
  - (m) a person who applied for an inquiry into a ballot under Part 2 of Chapter 3, where the Federal Court found that an irregularity happened;
  - (n) a person who applied for an inquiry into a ballot under Part 2 of Chapter 3, where the Federal Court certified under subsection 325(3) that the person acted reasonably in applying;
  - (o) a person who incurred costs in relation to an inquiry into a ballot under Part 2 of Chapter 3, other than the person who applied for the inquiry;
  - (p) a person who was a party to a proceeding under Part 2 of Chapter 11;
  - (q) a person who made an application under section 167, where the Federal Court granted a rule calling on another person, or an organisation, to show cause why an order should not be made under subsection 167(2) in relation to the other person or organisation.
- (3) In subsection (1), **relevant costs** means:
- (a) in the case of a person referred to in paragraph (2)(a), (c), (k) or (q)—the costs incurred by the person in relation to the application concerned; or
  - (b) in the case of a person referred to in paragraph (2)(b) or (p)—the costs incurred by the person in relation to the proceeding concerned; or
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- (c) in the case of a person referred to in paragraph (2)(d), (e), (m) or (n)—the costs incurred by the person in relation to the inquiry concerned; or
- (d) in the case of a person referred to in paragraph (2)(f), (j) or (o)—the costs referred to in that paragraph; or
- (e) in the case of a member of an organisation referred to in paragraph (2)(g) or (h)—the costs incurred by the member in relation to the application concerned.

**325 Federal Court may certify that application was reasonable**

- (1) Where a person has applied for an inquiry into an election but the Federal Court does not find that an irregularity happened, the Court may certify for the purposes of this Division that the person acted reasonably in applying.
- (2) Where a member of an organisation has made an application under subsection 215(5) but the Federal Court does not declare that the person who is the subject of the application was not eligible to be a candidate or to be elected or appointed or had ceased to hold office, the Court may certify for the purposes of this Division that the member acted reasonably in making the application.
- (3) Where a person has applied for an inquiry into a ballot under Part 2 (amalgamation) or Part 3 (withdrawal from amalgamation) of Chapter 3 but the Federal Court does not find that an irregularity happened, the Court may certify that the person acted reasonably in applying.

**326 Applications under sections 163, 164, 164A and 167**

- (1) The Minister may refuse an application made by a person referred to in paragraph 324(2)(a), (b), (c) or (q) if satisfied that:
  - (a) the order sought in the proceeding concerned is the same or substantially the same as an order obtained or sought in another relevant proceeding and the proceeding involves the determination of the same or substantially the same questions of fact or law or mixed fact and law as were or are involved in the determination of the other relevant proceeding; or
  - (b) it would be contrary to the interests of justice to grant financial assistance to the applicant in relation to the proceeding concerned.

(2) In subsection (1):

*other relevant proceeding* means a proceeding that:

- (a) was instituted, whether before or after the commencement of this section, before the institution of the proceeding in relation to which the application referred to in that subsection was made; and
  - (b) has been heard and determined by, or is pending before, the Federal Court.
- (3) Where the Minister authorises the payment of financial assistance on application made by a person referred to in paragraph 324(2)(a), (b), (c), or (q), subsections (4) and (5) of this section apply.
- (4) The Minister may:
- (a) specify the amount, or determine from time to time the amounts, to be paid; or
  - (b) authorise the payment of such amount as is determined, or such amounts as are determined from time to time, under directions of the Minister.
- (5) The Minister may authorise payment to be made by the Commonwealth before or after the hearing or determination by the Federal Court of the proceeding concerned.

### **327 Fees for 2 counsel not normally to be paid**

Nothing in this Division authorises a payment in relation to fees of more than one counsel appearing for the person applying for financial assistance unless 2 or more counsel appeared, or are to appear, for any other person at the hearing concerned.

### **328 Powers of Federal Court not affected**

Nothing in this Division limits the power of the Federal Court to make an order as to the costs of proceedings before the Court.

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**Division 2—Costs**

**329 Costs only where proceeding instituted vexatiously etc.**

- (1) A person who is a party to a proceeding (including an appeal) in a matter arising under this Schedule must not be ordered to pay costs incurred by any other party to the proceeding unless the person instituted the proceeding vexatiously or without reasonable cause.
- (2) In subsection (1):  
*costs* includes all legal and professional costs and disbursements and expenses of witnesses.

## **Part 4—Inquiries and investigations**

### **330 Registrar or staff may make inquiries**

- (1) A Registrar, or another Registry official on behalf of a Registrar, may make inquiries as to whether the following are being complied with:
  - (a) Part 3 of Chapter 8;
  - (b) the reporting guidelines made under that Part;
  - (c) regulations made for the purposes of that Part;
  - (d) rules of a reporting unit relating to its finances or financial administration.
- (2) A Registrar, or another Registry official on behalf of a Registrar, may make inquiries as to whether a civil penalty provision (see section 305) has been contravened.
- (3) The person making the inquiries may take such action as he or she considers necessary for the purposes of making the inquiries. However, he or she cannot compel a person to assist with the inquiries under this section.

### **331 Registrar may conduct investigations**

- (1) If a Registrar is satisfied that there are reasonable grounds for doing so, the Registrar may conduct an investigation as to whether:
  - (a) a provision of Part 3 of Chapter 8 has been contravened; or
  - (b) the reporting guidelines made under that Part have been contravened; or
  - (c) a regulation made for the purposes of that Part has been contravened; or
  - (d) a rule of a reporting unit relating to its finances or financial administration has been contravened.
- (2) If a Registrar is satisfied that there are reasonable grounds for doing so, the Registrar may conduct an investigation as to whether a civil penalty provision (see section 305) has been contravened.
- (3) A Registrar may also conduct an investigation in the circumstances set out in the regulations.

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- (4) Where, having regard to matters that have been brought to notice in the course of, or because of, an investigation under subsection (1) or (2), a Registrar forms the opinion that there are grounds for investigating the finances or financial administration of the reporting unit, the Registrar may make the further investigation.
- (5) An investigation may, but does not have to, follow inquiries under section 330.

**332 Investigations arising from auditor's report**

- (1) Subject to subsection (2), a Registrar must:
  - (a) where the documents lodged in the Industrial Registry under section 268 include a report of an auditor setting out any:
    - (i) defect or irregularity; or
    - (ii) deficiency, failure or shortcoming; and
  - (b) where for any other reason the Registrar considers that a matter revealed in the documents should be investigated—investigate the matter.
- (2) The Registrar is not required to investigate the matters raised in the report of the auditor if:
  - (a) the defect, irregularity, deficiency, failure or shortcoming consists solely of the fact that the organisation concerned has kept financial records for its membership subscriptions separately on a cash basis as provided in subsection 252(4); or
  - (b) after consultation with the reporting unit and the auditor, the Registrar is satisfied that the matters are trivial or will be remedied in the following financial year.
- (3) Where, having regard to matters that have been brought to notice in the course of, or because of, an investigation under subsection (1), a Registrar forms the opinion that there are grounds for investigating the finances or the financial administration of the reporting unit, the Registrar may make the further investigation.

**333 Investigations arising from request from members**

- (1) Where documents have been lodged in the Industrial Registry under section 268, at least:

- (a) if the reporting unit has more than 5,000 members—250 members; or
  - (b) in any other case—5% of the members of the reporting unit; may request a Registrar to investigate the finances and the financial administration of the reporting unit.
- (2) On receipt of a request under subsection (1), a Registrar must investigate the finances and the financial administration of the reporting unit concerned. The Registrar, in conducting the investigation, is not limited to the most recent financial year for which documents have been lodged and may investigate years for which documents are yet to be lodged.
- (3) Where the Registrar receives more than one request in relation to a reporting unit during a financial year, the Registrar is only required to conduct one investigation but may conduct more than one investigation.

### **334 Investigations arising from referral under section 278**

If a matter is referred to the Industrial Registrar under section 278, the Industrial Registrar must ensure that a Registrar conducts an investigation.

### **335 Conduct of investigations**

- (1) This section applies to:
  - (a) a designated officer or employee of the reporting unit concerned; and
  - (b) a former designated officer or employee of the reporting unit; and
  - (c) a person who held the position of auditor of the reporting unit during the period that is the subject of the investigation;if a Registrar has reason to believe that the person:
  - (d) has information or a document that is relevant to the investigation; or
  - (e) is capable of giving evidence which the Registrar has reason to believe is relevant to the investigation.
- (2) For the purpose of making an investigation, the Registrar may, by written notice, require the person:

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- (a) to give to the Registrar, within the period (being a period of not less than 14 days after the notice is given) and in the manner specified in the notice, any information within the knowledge or in the possession of the person; and
  - (b) to produce or make available to the Registrar, at a reasonable time (being a time not less than 14 days after the notice is given) and place specified in the notice, any documents in the custody or under the control of the person, or to which he or she has access; and
  - (c) to attend before the Registrar, at a reasonable time (being a time not less than 14 days after the notice is given) and place specified in the notice, to answer questions relating to matters relevant to the investigation, and to produce to the Registrar all records and other documents in the custody or under the control of the person relating to those matters.
- (3) A notice requiring a person to attend must state that the person may be accompanied by another person. The other person may be, but does not have to be, a lawyer.

**336 Action following an investigation**

- (1) If, at the conclusion of an investigation, the Registrar who conducted the investigation is satisfied that the reporting unit concerned has contravened:
  - (a) a provision of Part 3 of Chapter 8; or
  - (b) the reporting guidelines; or
  - (c) a provision of the regulations; or
  - (d) a rule of the reporting unit relating to the finances or financial administration of the reporting unit;the Registrar must notify the reporting unit accordingly.
- (2) In addition to taking action under subsection (1), the Industrial Registrar may do all or any of the following:
  - (a) issue a notice to the reporting unit requesting that the reporting unit take specified action, within a specified period, to rectify the matter;
  - (b) apply to the Federal Court for an order under Part 2 of Chapter 10 (civil penalty provisions);
  - (c) refer the matter to the Director of Public Prosecutions for action in relation to possible criminal offences.



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Note: In appropriate circumstances, the Registrar may also make a determination in accordance with section 247 (determination of reporting units).

- (3) The Registrar may, on application by the reporting unit, extend any periods specified in the notice issued under subsection (2).
- (4) The reporting unit must comply with the request made in the notice issued under subsection (2).
- (5) The Federal Court may, on application by the Registrar, make such orders as the Court thinks fit to ensure that the reporting unit complies with subsection (4).

**337 Offences in relation to investigation by Registrar**

- (1) A person commits an offence if:
  - (a) the person does not comply with:
    - (i) a requirement under subsection 335(2) to attend before a Registrar; or
    - (ii) a requirement under subsection 335(2) to give information or produce a document; or
  - (b) the person gives information, or produces a document, in purported compliance with a requirement under subsection 335(2), and the person knows, or is reckless as to whether, the information or document is false or misleading; or
  - (c) when attending before a Registrar in accordance with a requirement under subsection 335(2), the person makes a statement, whether orally or in writing, and the person knows, or is reckless as to whether, the statement is false or misleading.

Maximum penalty: 30 penalty units.

- (2) Strict liability applies to paragraph (1)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Paragraph (1)(a) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) A person is not excused from giving information, or producing a document, that the person is required to give or produce under

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subsection 335(2) on the ground that the information, or the production of the document, might tend to incriminate the person or expose the person to a penalty.

(5) However:

- (a) giving the information or producing the document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document;

is not admissible in evidence against the person in criminal proceedings or proceedings that may expose the person to a penalty, other than proceedings under, or arising out of, paragraph (1)(b) or (c).

## Part 4A—Protection for whistleblowers

### 337A Disclosures qualifying for protection under this Part

A disclosure of information by a person (the *discloser*) qualifies for protection under this Part if:

- (a) the discloser is one of the following:
  - (i) an officer of an organisation, or of a branch of an organisation;
  - (ii) an employee of an organisation, or of a branch of an organisation;
  - (iii) a member of an organisation, or of a branch of an organisation; and
- (b) the disclosure is made to one of the following:
  - (i) a Registrar;
  - (ii) the Employment Advocate;
  - (iii) the person occupying the position in the Department known as the director of the Building Industry Taskforce;
  - (iv) an inspector;
  - (v) an authorised officer; and
- (c) the discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure; and
- (d) the discloser has reasonable grounds to suspect that the information indicates that:
  - (i) the organisation, or a branch of the organisation, has, or may have, contravened a provision of this Schedule or this Act; or
  - (ii) an officer or employee of the organisation, or of a branch of the organisation, has, or may have, contravened a provision of this Schedule or this Act; and
- (e) the discloser makes the disclosure in good faith.

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**337B Disclosure that qualifies for protection not actionable etc.**

- (1) If a person makes a disclosure that qualifies for protection under this Part:

- (a) the person is not subject to any civil or criminal liability for making the disclosure; and
- (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.

Note: This subsection does not provide that the person is not subject to any civil or criminal liability for conduct of the person that is revealed by the disclosure.

- (2) Without limiting subsection (1):

- (a) the person has qualified privilege (see subsection (3)) in respect of the disclosure; and
- (b) a contract to which the person is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.

- (3) For the purpose of paragraph (2)(a), **qualified privilege**, in respect of the disclosure, means that the person:

- (a) has qualified privilege in proceedings for defamation; and
- (b) is not, in the absence of malice on the person's part, liable to an action for defamation at the suit of a person;

in respect of the disclosure.

- (4) For the purpose of paragraph (3)(b), **malice** includes ill will to the person concerned or any other improper motive.

- (5) This section does not limit or affect any right, privilege or immunity that a person has, apart from this section, as a defendant in proceedings, or an action, for defamation.

**337C Victimisation prohibited**

*Actually causing detriment to another person*

- (1) A person (the **first person**) contravenes this subsection if:

- (a) the first person engages in conduct; and
- (b) the first person's conduct causes any detriment to another person (the **second person**); and

- (c) the first person intends that his or her conduct cause detriment to the second person; and
- (d) the first person engages in his or her conduct because the second person or a third person made a disclosure that qualifies for protection under this Part.

*Threatening to cause detriment to another person*

- (2) A person (the **first person**) contravenes this subsection if:
  - (a) the first person makes to another person (the **second person**) a threat to cause any detriment to the second person or to a third person; and
  - (b) the first person:
    - (i) intends the second person to fear that the threat will be carried out; or
    - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
  - (c) the first person makes the threat because a person:
    - (i) makes a disclosure that qualifies for protection under this Part; or
    - (ii) may make a disclosure that would qualify for protection under this Part.

*Officers and employees involved in contravention*

- (3) If an organisation, or a branch of an organisation, contravenes subsection (1) or (2), any officer or employee of the organisation, or a branch of the organisation, who is involved in that contravention contravenes this subsection.

*Threats*

- (4) For the purpose of subsection (2), a threat may be:
  - (a) express or implied; or
  - (b) conditional or unconditional.

*Involvement in a contravention*

- (5) For the purpose of subsection (3), a person is **involved** in a contravention if, and only if, the person:
  - (a) has aided, abetted, counselled or procured the contravention;or

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- (b) has induced, whether by threats or promises, the contravention; or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

*Offence for contravening subsection (1), (2) or (3)*

- (6) A person commits an offence if the person contravenes subsection (1), (2) or (3).

Maximum penalty: 25 penalty units or imprisonment for 6 months, or both.

- (7) In a prosecution for an offence that relates to a contravention of subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

**337D Right to compensation**

If:

- (a) a person (the ***person in contravention***) contravenes subsection 337C(1), (2) or (3); and
- (b) a person (the ***victim***) suffers damage because of the contravention;

the person in contravention is liable to compensate the victim for the damage.

## **Part 5—Jurisdiction of the Federal Court of Australia**

### **338 Jurisdiction of Federal Court**

- (1) The Federal Court has jurisdiction with respect to matters arising under this Schedule in relation to which:
  - (a) applications may be made to it under this Schedule; or
  - (b) actions may be brought in it under this Schedule; or
  - (c) questions may be referred to it under this Schedule or the Workplace Relations Act; or
  - (d) penalties may be sued for and recovered under this Schedule; or
  - (e) prosecutions may be instituted for offences against this Schedule.
- (2) For the purposes of section 44 of the *Judiciary Act 1903*, the Federal Court is taken to have jurisdiction with respect to any matter in which a writ of mandamus or prohibition or an injunction is sought against an officer or officers of the Commonwealth holding office under the Workplace Relations Act and exercising powers or functions in relation to matters arising under this Schedule.

Note: Section 44 of the *Judiciary Act 1903* gives the High Court of Australia power to remit a matter to a federal court that has jurisdiction with respect to that matter.

- (3) The Federal Court has jurisdiction with respect to matters remitted to it under section 44 of the *Judiciary Act 1903*.

### **339 Exclusive jurisdiction**

- (1) Subject to this Schedule, the jurisdiction of the Federal Court in relation to an act or omission for which an organisation or member of an organisation is liable to be sued, or to be proceeded against for a pecuniary penalty, is exclusive of the jurisdiction of any other court created by the Parliament or any court of a State or Territory.
- (2) The jurisdiction of the Federal Court in relation to matters arising under section 163, 164, 164A, 164B or 167 or Part 3 of Chapter 7

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is exclusive of the jurisdiction, or any similar jurisdiction, of a State industrial authority.

**340 Exercise of Court's original jurisdiction**

- (1) The jurisdiction of the Federal Court under this Schedule is to be exercised by a Full Court in relation to:
    - (a) matters in relation to which applications are made to the Court under section 28 (cancellation of registration); and
    - (b) matters in which a writ of mandamus or prohibition or an injunction is sought against:
      - (i) a Presidential member; or
      - (ii) officers of the Commonwealth at least one of whom is a Presidential member.
  - (2) Subsection (1) does not require the jurisdiction of the Court to be exercised by a Full Court in relation to a prosecution for an offence merely because the offence relates to a matter to which that subsection applies.
  - (3) Subsection (1) does not, in relation to matters referred to in that subsection, require the jurisdiction of the Court to be exercised by a Full Court to:
    - (a) join or remove a party; or
    - (b) make an order (including an order for costs) by consent disposing of a matter; or
    - (c) make an order that a matter be dismissed for want of prosecution; or
    - (d) make an order that a matter be dismissed for:
      - (i) failure to comply with a direction of the Court; or
      - (ii) failure of the applicant to attend a hearing relating to the matter; or
    - (e) vary or set aside an order under paragraph (c) or (d); or
    - (f) give directions about the conduct of a matter, including directions about:
      - (i) the use of written submissions; and
      - (ii) limiting the time for oral argument.
  - (4) The Rules of Court may make provision enabling the powers mentioned in subsection (3) to be exercised, subject to conditions prescribed by the Rules, without an oral hearing.
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### **341 Reference of proceedings to Full Court**

- (1) At any stage of a proceeding in a matter arising under this Schedule, a single Judge exercising the jurisdiction of the Federal Court:
  - (a) may refer a question of law for the opinion of a Full Court; and
  - (b) may, of the Judge's own motion or on the application of a party, refer the matter to a Full Court to be heard and determined.
- (2) If a Judge refers a matter to a Full Court under subsection (1), the Full Court may have regard to any evidence given, or arguments adduced, in the proceeding before the Judge.

### **342 Appeal to the Court from certain judgments**

In spite of section 24 of the *Federal Court Act 1976*, an appeal does not lie to a Full Court from a judgment by a single Judge in an inquiry referred to in section 69, 108 or 201 except in accordance with leave given by the Court.

## Part 6—Other

### 343 Delegation by Minister

The Minister may, in writing, delegate to:

- (a) the Secretary of the Department; or
  - (b) an SES employee or acting SES employee;
- all or any of the Minister's powers under this Schedule.

### 344 Conduct by officers, directors, employees or agents

- (1) Where it is necessary to establish, for the purposes of this Schedule, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
  - (a) that the conduct was engaged in by an officer, director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
  - (b) that the officer, director, employee or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by:
  - (a) an officer, director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or
  - (b) any other person at the direction or with the consent or agreement (whether express or implied) of an officer, director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, director, employee or agent;is taken, for the purposes of this Schedule, to have been engaged in also by the body corporate.
- (3) A reference in this section to the state of mind of a person includes a reference to the knowledge, intent, opinion, belief or purpose of the person and the person's reasons for the intent, opinion, belief or purpose.

Note: Section 6 of this Schedule defines *this Schedule* to include the regulations.

**345 Right to participate in ballots**

Subject to reasonable provisions in the rules of an organisation in relation to enrolment, every financial member of the organisation has a right to vote at any ballot taken for the purpose of submitting a matter to a vote of the members of the organisation, or of a branch, section or other division of the organisation in which the member is included.

**346 Requests by members for information concerning elections and certain ballots**

A financial member of an organisation may, by notice in writing, request the returning officer:

- (a) in relation to an election for an office or other position in the organisation or a branch of the organisation; or
- (b) in relation to a ballot taken for the purpose of submitting a matter to a vote of the members of an organisation or a branch of the organisation;

to provide to the member specified information for the purpose of determining whether there has been an irregularity in relation to the election or ballot, and the returning officer must not unreasonably withhold the information.

**347 Providing copy of rules or list of offices etc. on request by member**

- (1) If a member of an organisation requests the organisation, or a branch of the organisation, to provide to the member:
  - (a) a copy of the rules of the organisation or branch; or
  - (b) a copy of any amendments of the rules made since a specified time; or
  - (c) a copy of the list of the offices, or of the persons holding the offices, of an organisation or branch lodged in the Industrial Registry on behalf of the organisation under subsection 233(1);

the organisation or branch (as the case requires) must provide a copy to the member and, subject to the regulations, must provide the copy free of charge.

Note: This subsection is a civil penalty provision (see section 305).

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- (2) A request under this section:
  - (a) must be made to the secretary, or a person performing (in whole or part) the duties of secretary, of the organisation or branch concerned; and
  - (b) must be in writing; and
  - (c) must specify the period (of not less than 14 days) within which the relevant copy must be provided.
- (3) An organisation or branch whose rules or list of offices, or of the persons holding the offices, are available on the Internet must inform a member seeking a copy of that fact. However, informing the member of that fact does not affect the organisation's or branch's other obligations under this section and the regulations.
- (4) The regulations may:
  - (a) prescribe the manner in which a request under this section must be made; and
  - (b) prescribe the time within which the organisation or branch must respond to the request; and
  - (c) prescribe the form or forms in which a copy of the rules, amendments or list of offices, or of the persons holding the offices, may be provided; and
  - (d) prescribe fees that may be charged by an organisation or branch for providing a copy of the rules or amendments to a member if that member has been provided with a copy of the same rules or amendments free of charge within the past 3 years; and
  - (e) prescribe fees that may be charged by an organisation or branch for providing a copy of a list of offices to a member if that member has already been provided with a copy of the same list free of charge.

**348 Certificate as to membership of organisation**

A certificate of a Registrar stating that a specified person was at a specified time a member or officer of a specified organisation or a specified branch of a specified organisation is, in all courts and proceedings, evidence that the facts are as stated.

**349 List of officers to be evidence**

A list of the officers of an organisation or a branch of an organisation lodged in the Industrial Registry on behalf of the organisation, or a copy of any such list certified by a Registrar, is evidence that the persons named in the list were, on the day when the list was lodged, officers of the organisation or branch.

**350 Unauthorised collection of money**

- (1) A person commits an offence if:
- (a) the person makes a representation that the person is authorised to collect money on behalf of an organisation; and
  - (b) the person knows the representation is false.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if:
- (a) the person collects money on behalf of an organisation; and
  - (b) the person knows that he or she does not have authority to do so.

Maximum penalty: 20 penalty units.

**351 No imprisonment in default**

In spite of the provisions of any other law, a court may not direct that a person is to serve a sentence of imprisonment in default of the payment of a fine or other pecuniary penalty imposed under this Schedule.

**352 Jurisdiction of courts limited as to area**

- (1) For the purposes of this Schedule, a court of a State or Territory whose jurisdiction is limited, as to subject matter or parties, to any part of a State or Territory is taken to have jurisdiction throughout the State or Territory.
- (2) On the hearing of a proceeding in a court for the recovery of a penalty, fine, fee, levy or due, the court may, if in the interests of justice it considers appropriate, adjourn the hearing to a court of competent jurisdiction to be held at some other place in the same State or Territory.

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**353 Public sector employer to act through employing authority**

In spite of anything to the contrary in this Schedule, the Workplace Relations Act or any other law, the employer of an employee engaged in public sector employment must, for the purposes of this Schedule and the Rules of the Commission, act only by an employing authority of the employee acting on behalf of the employer and, in particular:

- (a) anything done by an employing authority of an employee has effect, for those purposes, as if it had been done by the employer of the employee; and
- (b) anything served on, or otherwise given or notified to, an employing authority of an employee has effect, for those purposes, as if it had been served on, or given or notified to, the employer of the employee.

**354 Proceedings by and against unincorporated clubs**

- (1) For the purposes of this Schedule, the treasurer of a club is taken to be the employer of a person employed for the purposes or on behalf of the club, and any proceeding that may be taken under this Schedule by or against the club may be taken by or against the treasurer on behalf of the club.
- (2) The treasurer is authorised to retain out of the funds of the club sufficient money to meet payments made by the treasurer on behalf of the club under this section.
- (3) In this section:

***club*** means an unincorporated club.

***treasurer*** includes a person having possession or control of any funds of a club.

**355 Inspection of documents etc.**

All documents and other things produced in evidence before the Commission may be inspected by the Commission or by such other parties as the Commission allows.

**356 Trade secrets etc. tendered as evidence**

- (1) In a proceeding before the Federal Court or the Commission:
  - (a) the person entitled to a trade secret may object that information tendered as evidence relates to the trade secret; or
  - (b) a witness or party may object that information tendered as evidence relates to the profits or financial position of the witness or party.
- (2) Where an objection is made under subsection (1) to information tendered as evidence, the information may only be given as evidence under a direction of the Federal Court or Commission.
- (3) If information is given as evidence under subsection (2), it must not be published in any newspaper, or otherwise, unless the Federal Court or Commission, by order, permits the publication.
- (4) Where the Federal Court or Commission directs that information relating to a trade secret or to the profits or financial position of a witness or party is to be given in evidence, the evidence must be taken in private if the person entitled to the trade secret, or the witness or party, requests.
- (5) The Federal Court or Commission may direct that evidence given in a proceeding before it, or the contents of a document produced for inspection, must not be published.
- (6) A person commits an offence if the person gives as evidence, or publishes, any information in contravention of this section or a direction given under this section.

Maximum penalty: 20 penalty units.

**357 Application of penalty**

A court that imposes a monetary penalty under this Schedule (other than a penalty for an offence) may order that the penalty, or a part of the penalty, be paid to:

- (a) the Commonwealth; or
- (b) an organisation; or
- (c) another person.

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**358 Enforcement of penalties etc.**

- (1) Where a court has:
  - (a) imposed a monetary penalty under this Schedule (other than a penalty for an offence); or
  - (b) ordered the payment of costs or expenses;a certificate signed by a Registrar, specifying the amount payable and by whom and to whom respectively it is payable, may be filed in the Federal Court or in any other court of competent jurisdiction.
- (2) A certificate filed in a court under subsection (1) is enforceable in all respects as a final judgment of the court in which it is filed.
- (3) Where there are 2 or more creditors under a certificate, process may be issued separately by each creditor for the enforcement of the certificate as if there were separate judgments.

**359 Regulations**

*General power*

- (1) The Governor-General may make regulations prescribing all matters:
  - (a) required or permitted by this Schedule to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

*Specific matters on which regulations may be made*

- (2) The matters in relation to which the Governor-General may make regulations include, but are not limited to:
  - (a) the manner in which, and the time within which, applications, submissions and objections under this Schedule may be made and dealt with; and
  - (b) the fees to be charged in relation to proceedings under this Schedule; and
  - (c) the manner in which, and the time within which, the AEC must give post-election and post-ballot reports; and
  - (d) requiring, or authorising a particular person to require, the providing by all or any organisations of information relating to matters relevant to the conduct of elections for offices in organisations and branches of organisations; and



- (e) requiring the exhibiting, on the premises of an employer bound by an order of the Commission under this Schedule, of any of the terms of the order; and
- (f) penalties not exceeding a fine of 10 penalty units for offences against the regulations; and
- (g) pecuniary penalties not exceeding:
  - (i) in the case of a body corporate—25 penalty units; or
  - (ii) in any other case—5 penalty units;for contravening civil penalty provisions in the regulations.

Note: Regulations made under the Workplace Relations Act may also be relevant to the operation of this Schedule. For example, regulations about the Commission's practice and procedure may be made under section 359 of the Workplace Relations Act.

*Regulations relating to payroll deduction facilities*

- (3) The Governor-General may also make regulations imposing requirements relating to payroll deduction facilities on:
  - (a) the Commonwealth in its capacity as an employer; and
  - (b) employers who are constitutional corporations.

Note: For the meaning of *constitutional corporation*, see section 6.

- (4) Regulations referred to in subsection (3) may include, but are not limited to:
  - (a) requirements that employers give employees information about money received by the employer in relation to the provision by the employer of payroll deduction facilities for an organisation; and
  - (b) requirements that employers who provide payroll deduction facilities inform employees who use or have used the facilities in relation to their membership of an organisation that ceasing to use the facilities does not constitute resignation from the organisation.

## **Part 7—Complementary registration systems**

### **Division 1—Application of this Part**

#### **360 Complementary registration systems**

If:

- (a) an organisation is divided into branches; and
- (b) the operations of one of the branches is confined to a prescribed State or the operations of 2 or more of the branches are each confined to a prescribed State; and
- (c) the organisation proposes in accordance with this Part to amalgamate with an associated body as defined by this Part for the purpose of seeking the non-corporate registration of the branch, or of any of the branches, referred to in paragraph (b) under an Act of the State concerned that is, or under Acts of the States concerned each of which is, a prescribed State Act for the purposes of this Part;

then, in addition to the other provisions of this Schedule, this Part applies to the organisation but so applies only in relation to the branch or branches referred to in paragraph (c).

**Division 2—Preliminary****361 Definitions**

- (1) In this Part, unless the contrary intention appears:

***amalgamation*** means the carrying out of arrangements in relation to an organisation and an associated body under which it is intended that:

- (a) a branch of the organisation is to obtain non-corporate registration under a prescribed State Act; and
- (b) the associated body is to be de-registered under a prescribed State Act; and
- (c) members of the associated body who are not already members of the organisation are to become members of the organisation; and
- (d) the property of the associated body is to become the property of the organisation forming part of the branch fund of the branch; and
- (e) the liabilities of the associated body are to be satisfied from the branch fund of the branch.

***associated body***, in relation to an organisation, means an association registered under a prescribed State Act that is or purports to be composed of substantially the same members, and has or purports to have substantially the same officers, as a branch of the organisation in the same State, including such an association that has purported to function as a branch of the organisation.

***State*** means a prescribed State.

## **Division 3—Branch rules**

### **362 Branch funds**

- (1) The rules of a branch of an organisation must provide for a fund of the branch that is to be managed and controlled under rules of the branch, and must make provision in relation to the fund in accordance with subsection (2).
- (2) The branch fund is to consist of:
  - (a) real or personal property of which the branch of the organisation, by the rules or by any established practice not inconsistent with the rules, has, or in the absence of a limited term lease, bailment or arrangement, would have, the right of custody, control or management; and
  - (b) the amounts of entrance fees, subscriptions, fines, fees or levies received by a branch, less so much of the amounts as is payable by the branch to the organisation; and
  - (c) interest, rents, dividends or other income derived from the investment or use of the fund; and
  - (d) a superannuation or long service leave or other fund operated or controlled by the branch for the benefit of its officers or employees; and
  - (e) a sick pay fund, accident pay fund, funeral fund, tool benefit fund or similar fund operated or controlled by the branch for the benefit of its members; and
  - (f) property acquired wholly or mainly by expenditure of the money of the fund or derived from other assets of the fund; and
  - (g) the proceeds of a disposal of parts of the fund.
- (3) The Commission may grant to a branch of an organisation exemption from this section or any provision of this section on the ground that the branch's rules make adequate and reasonable provision for its funds, having regard to the organisation's functioning under this Schedule and the Workplace Relations Act and its participation in any State workplace relations system.

**363 Obligations of Commission in relation to application under section 158**

- (1) Subsections (2) and (3) apply in relation to the consideration by the Commission of an application under section 158 for consent to a change in the name, or an alteration of the eligibility rules, of an organisation.
- (2) The Commission must, in addition to any other relevant matters, have regard to:
  - (a) whether there is, in relation to the organisation, an associated body registered under a prescribed State Act; and
  - (b) whether the reason the change is sought is to enable the organisation, in addition to representing members or staff members under this Schedule or the Workplace Relations Act, to represent under the State Act a class of persons who would, if the change were consented to, become eligible for membership.
- (3) In the case of an alteration to a rule that may effect a change in the class of persons eligible for membership of a branch of the organisation that is registered under the law of a State, the Commission must, before consenting, give notice of the proposed change to the industrial registrar or similar officer appointed under the law of the State in which the branch operates and, if so requested, consult with the industrial registrar or officer.

**364 Branch autonomy**

The rules of an organisation must provide for the autonomy of a branch in matters affecting members of the branch only and matters concerning the participation of the branch in a State workplace relations system.

**365 Organisation may participate in State systems**

- (1) Where it is not contrary to the rules of an organisation to do so, the organisation may participate in workplace relations systems.
- (2) For the purpose of participating, a branch of an organisation may become registered under a law of a State so long as that registration does not involve the branch in becoming incorporated, or otherwise becoming a legal entity, under the law of the State.

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- (3) Where an organisation participates, its rules may provide that the secretary of the branch of the organisation in the State is the person to sue or to be sued under the law of the State in relation to any acts or omissions arising from its participation.

**Division 4—Amalgamation of organisation and associated body****366 Organisation and associated body may amalgamate**

An organisation and an associated body may amalgamate in the manner set out in this Division.

**367 Procedure for amalgamation**

- (1) The committee of management of an organisation and the committee of management of the associated body must each pass a resolution proposing amalgamation and specifying particulars of the proposed amalgamation.
- (2) Application must be made to the Commission by the organisation for approval of the amalgamation.
- (3) The application must be accompanied by a copy of any proposed alterations of the rules of the organisation.
- (4) If the rules of the organisation do not comply, subject to subsection 362(3), with Division 3 in respect of each branch for which the organisation proposes to seek non-corporate registration under a prescribed State Act, the proposed alterations must include alterations necessary for the rules so to comply.
- (5) The Commission must:
  - (a) determine what notice is to be given to other persons of the application; and
  - (b) determine whether, on whom and how notice should be served and whether it should be advertised in any newspaper; and
  - (c) fix a period during which objections may be lodged.
- (6) Objection may be made to the amalgamation, so far as it involves an alteration of the eligibility rules of the organisation, by:
  - (a) another organisation; or
  - (b) a member of the associated body; or
  - (c) a registered association in the State in which the associated body functions;

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because there is another organisation to which the members of the associated body, whose eligibility for membership would depend on the alteration, could more conveniently belong.

- (7) Objection may be made to the amalgamation by a member of the organisation or of the associated body on the ground that:
  - (a) the provisions of this section have not been complied with; or
  - (b) the amalgamation would do substantial injustice to the members of the organisation or associated body.
- (8) If any objections are duly lodged or if the Commission otherwise deems it advisable to do so, the Commission must:
  - (a) fix a day and place of hearing; and
  - (b) determine to whom and in what manner notice of the day and place of the hearing shall be given.
- (9) If the Commission:
  - (a) finds that no duly made objection is justified; and
  - (b) is satisfied that the provisions of this section have been complied with; and
  - (c) is satisfied that the amalgamation would not do substantial injustice to the members of the organisation or of the associated body; and
  - (d) is satisfied that any proposed alterations of the rules of the organisation:
    - (i) comply with and are not contrary to this Schedule and applicable awards; and
    - (ii) are not otherwise contrary to law; and
    - (iii) have been decided on under the rules of the organisation;

the Commission must, subject to subsection (10), approve the amalgamation and fix the day on which the amalgamation is to take effect, but otherwise the Commission must refuse to approve the amalgamation.
- (10) The Commission must not approve an amalgamation unless the Commission is satisfied as to arrangements made relating to property and liabilities of the associated body.
- (11) On the day on which the amalgamation takes effect, any alteration of the rules of the organisation takes effect.



- (12) On the day on which the amalgamation takes effect, all members of the associated body who are not already members of the organisation but are or become, on that day, eligible for membership of the organisation:
- (a) become members of the organisation; and
  - (b) are to be taken to have been members for the period ending on that day during which they were members of the associated body.

**Division 5—Exercise of Commission’s powers**

**368 Exercise of Commission’s powers under this Part**

The powers of the Commission under this Part are exercisable only by a Presidential Member.

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## **Schedule 1—Interpretation for purposes of additional operation of Act**

**1** In the Act, unless the contrary intention appears:

***flight crew officer*** means a person who performs (whether with or without other duties) duties as a pilot, navigator or flight engineer of aircraft, and includes a person being trained for the performance of such duties.

***flight crew officer's employer*** means a person (including an authority of the Commonwealth) carrying on a business in the course of which the person employs flight crew officers, other than a business the principal place of control of which is outside Australia.

***maritime employee*** means a person who is, or whose occupation is that of, a master as defined in section 6 of the *Navigation Act 1912*, a seaman as so defined or a pilot as so defined.

***pilot***, in relation to an aircraft, includes a pilot in command, co-pilot or pilot of any other description.

***ship*** includes a barge, lighter, hulk or other vessel.

***stevedoring operations*** means:

- (a) the loading or unloading of cargo into or from ships;
- (b) the loading or unloading, into or from ships, of ships' stores, coal or fuel oil (whether for bunkers or not), passengers' luggage or mails;
- (c) the handling or storage of cargo or other goods at or adjacent to a wharf;
- (d) the driving or operation of mechanical appliances used in relation to the loading or unloading of ships or with the handling or storage of cargo or other goods at or adjacent to a wharf; or
- (e) haulage or trucking from ship to shed or shed to ship;

and includes:

- (f) the removal or replacing of beams or hatches;
- (g) the handling of dunnage or ballast;

- (h) the preparing or cleaning of holds; and
- (j) the preparation of gear for use in relation to the loading or unloading of ships;

when that work is performed by a person who is a member, or has applied for membership, of the Waterside Workers Federation of Australia.

**waterside employer** means:

- (a) a person who engages, or offers to engage, persons for employment as waterside workers for work on a wharf or ship;
- (b) a ship's agent or shipowner who directs the method or time of working of a stevedoring employer or contractor; or
- (c) a master or officer of a ship engaged in work of the same nature as the work usually performed by a stevedoring employer;

and includes an agent or servant of a person to whom paragraph (a), (b) or (c) applies.

**waterside worker** means a person who accepts, or offers to accept, employment for work in the loading or unloading of cargo into or from ships, and includes a person who is a member, or has applied for membership, of the Waterside Workers Federation of Australia who accepts, or offers to accept, employment for work in:

- (a) the loading or unloading, into or from ships, of ships' stores, coal or fuel oil (whether for bunkers or not), passengers' luggage or mails;
- (b) the handling or storage of cargo or other goods at or adjacent to a wharf;
- (c) the driving or operation of mechanical appliances used in relation to the loading or unloading of ships or with the handling or storage of cargo or other goods at or adjacent to a wharf;
- (d) haulage or trucking from ship to shed or shed to ship;
- (e) the removal or replacing of beams or hatches;
- (f) the handling of dunnage or ballast;
- (g) the preparing or cleaning of holds; or
- (h) the preparation of gear for use in relation to the loading or unloading of ships;

but does not include:

- (j) persons working in or alongside a ship in relation to the direction or checking of the work of waterside workers;
- (k) members of the crew of a ship on the ship's articles;
- (m) members of the crew of a lighter;
- (n) members of the Sydney Coal Lumpers' Union while loading or unloading coal in the port of Sydney;
- (o) persons employed, directly or indirectly, at a port in or in relation to stevedoring operations that consist of the loading or unloading, into or from ships, of loose bulk cargo by means of equipment based on the shore, other than persons employed, in relation to a particular class of loose bulk cargo, in operations that, before 14 August 1956, were ordinarily performed at the port by members of the Waterside Workers Federation of Australia or North Australian Workers Union in relation to the loading or unloading by those means of loose bulk cargo of that class; or
- (p) persons in the regular employment of a person engaged in an industrial undertaking, being persons whose duties include the performance of stevedoring operations in relation to that undertaking.

**wharf** includes a pier, jetty or shed adjacent to a wharf.

**2** For the purposes of subsection 5(4) of the Act, the matters are:

- (a) a question as to the number of waterside workers required at a port for the proper and effective conduct of stevedoring operations at the port;
- (b) a question as to the circumstances in which waterside workers will be employed at a port to assist in the performance of particular stevedoring operations because the number of waterside workers regularly employed at the port is insufficient for the efficient performance of the stevedoring operations;
- (c) matters relating to the recruitment of waterside workers; and
- (d) a matter pertaining to attendance money or a question arising in relation to such a matter.

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## Schedule 2—Oath or affirmation of office

Sections 19 and 78

I, \_\_\_\_\_, do swear that I will bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of *(insert name of office)* and that I will faithfully and impartially perform the duties of the office. So help me God!

or

I, \_\_\_\_\_, do solemnly and sincerely promise and declare that [*as above, omitting the words “So help me God!”*]

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## **Schedule 10—Convention concerning termination of employment at the initiative of the employer**

### Section 4

The General Conference of the International Labour Organisation,  
Having been convened at Geneva by the Governing Body of the International  
Labour Office, and having met in its Sixty-eighth Session on 2 June 1982,  
and

Noting the existing international standards contained in the Termination of  
Employment Recommendation, 1963, and

Noting that since the adoption of the Termination of Employment  
Recommendation, 1963, significant developments have occurred in the law  
and practice of many member States on the questions covered by that  
Recommendation, and

Considering that these developments have made it appropriate to adopt new  
international standards on the subject, particularly having regard to the  
serious problems in this field resulting from the economic difficulties and  
technological changes experienced in recent years in many countries,

Having decided upon the adoption of certain proposals with regard to  
termination of employment at the initiative of the employer, which is the  
fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international  
Convention;

adopts this twenty-second day of June of the year one thousand nine hundred  
and eighty-two the following Convention, which may be cited as the  
Termination of Employment Convention, 1982:

### **PART I. METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS**

#### *Article 1*

The provisions of this Convention shall, in so far as they are not otherwise  
made effective by means of collective agreements, arbitration awards or court  
decisions or in such other manner as may be consistent with national practice,  
be given effect by laws or regulations.

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*Article 2*

1. This Convention applies to all branches of economic activity and to all employed persons.
2. A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention:
  - (a) workers engaged under a contract of employment for a specified period of time or a specified task;
  - (b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;
  - (c) workers engaged on a casual basis for a short period.
3. Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.
4. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements which as a whole provide protection that is at least equivalent to the protection afforded under the Convention.
5. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.
6. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraphs 4 and 5 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice regarding the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.



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*Article 3*

For the purpose of this Convention the terms “termination” and “termination” of employment mean termination of employment at the initiative of the employer.

**PART II. STANDARDS OF GENERAL APPLICATION  
DIVISION A. JUSTIFICATION FOR TERMINATION**

*Article 4*

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

*Article 5*

The following, inter alia, shall not constitute valid reasons for termination:

- (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- (b) seeking office as, or acting or having acted in the capacity of, a workers’ representative;
- (c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
- (d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- (e) absence from work during maternity leave.

*Article 6*

1. Temporary absence from work because of illness or injury shall not constitute a valid reason for termination.

2. The definition of what constitutes temporary absence from work, the extent to which medical certification shall be required and possible limitations to the application of paragraph 1 of this Article shall be determined in accordance with the methods of implementation referred to in Article 1 of this Convention.

**DIVISION B. PROCEDURE PRIOR TO OR AT THE TIME OF  
TERMINATION**

*Article 7*

The employment of a worker shall not be terminated for reasons related to the worker’s conduct or performance before he is provided an opportunity to

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defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

#### DIVISION C. PROCEDURE OF APPEAL AGAINST TERMINATION

##### *Article 8*

1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

2. Where termination has been authorised by a competent authority the application of paragraph 1 of this Article may be varied according to national law and practice.

3. A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not exercised that right within a reasonable period of time after termination.

##### *Article 9*

1. The bodies referred to in Article 8 of this Convention shall be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified.

2. In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities:

- (a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer;
- (b) the bodies referred to in Article 8 of this Convention shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice.

3. In cases of termination stated to be for reasons based on the operational requirements of the undertaking, establishment or service, the bodies referred to in Article 8 of this Convention shall be empowered to determine whether the termination was indeed for these reasons, but the extent to which they shall also be empowered to decide whether these reasons are sufficient to justify that termination shall be determined by the methods of implementation referred to in Article 1 of this Convention.

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*Article 10*

If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.

**DIVISION D. PERIOD OF NOTICE**

*Article 11*

A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period.

**DIVISION E. SEVERANCE ALLOWANCE AND OTHER INCOME  
PROTECTION**

*Article 12*

1. A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to—

- (a) a severance allowance or other separation benefits, the amount of which shall be based inter alia on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or
- (b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or
- (c) a combination of such allowance and benefits.

2. A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in paragraph 1, subparagraph (a), of this Article solely because he is not receiving an unemployment benefit under paragraph 1, subparagraph (b).

3. Provision may be made by the methods of implementation referred to in Article 1 of this Convention for loss of entitlement to the allowance or benefits referred to in paragraph 1, subparagraph (a), of this Article in the event of termination for serious misconduct.

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PART III. SUPPLEMENTARY PROVISIONS CONCERNING  
TERMINATIONS OF EMPLOYMENT FOR ECONOMIC,  
TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

DIVISION A. CONSULTATION OF WORKERS' REPRESENTATIVES

*Article 13*

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:

- (a) provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;
- (b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

2. The applicability of paragraph 1 of this Article may be limited by the methods of implementation referred to in Article 1 of this Convention to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. For the purposes of this Article the term "the workers' representatives concerned" means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

DIVISION B. NOTIFICATION TO THE COMPETENT AUTHORITY

*Article 14*

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a written statement of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.

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2. National laws or regulations may limit the applicability of paragraph 1 of this Article to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. The employer shall notify the competent authority of the terminations referred to in paragraph 1 of this Article a minimum period of time before carrying out the terminations, such period to be specified by national laws or regulations.

#### PART IV. FINAL PROVISIONS

##### *Article 15*

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

##### *Article 16*

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

##### *Article 17*

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

##### *Article 18*

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all

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ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

*Article 19*

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

*Article 20*

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the conference the question of its revision in whole or in part.

*Article 21*

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 17 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

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*Article 22*

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixty-eighth Session which was held at Geneva and declared closed the twenty-third day of June 1982.

IN FAITH WHEREOF we have appended our signatures this twenty-third day of June 1982.

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## **Schedule 12—Convention concerning equal opportunities and equal treatment for men and women workers: workers with family responsibilities**

### Section 4

The General Conference of the International Labour Organisation,  
Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Sixty-seventh Session on 3 June 1981,  
and

Noting the Declaration of Philadelphia concerning the Aims and Purposes of the International Labour Organisation which recognises that “all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”, and

Noting the terms of the Declaration on Equality of Opportunity and Treatment for Women Workers and of the resolution concerning a plan of action with a view to promoting equality of opportunity and treatment for women workers, adopted by the International Labour Conference in 1975, and

Noting the provisions of international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, namely the Equal Remuneration Convention and Recommendation, 1951, the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and Part VIII of the Human Resources Development Recommendation, 1975, and

Recalling that the Discrimination (Employment and Occupation) Convention, 1958, does not expressly cover distinctions made on the basis of family responsibilities, and considering that supplementary standards are necessary in this respect, and

Noting the terms of the Employment (Women with Family Responsibilities) Recommendation, 1965, and considering the changes which have taken place since its adoption, and

Noting that instruments on equality of opportunity and treatment for men and women have also been adopted by the United Nations and other specialised agencies, and recalling, in particular, the fourteenth paragraph of the Preamble of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, to the effect that States Parties are

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“aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women”, and

Recognising that the problems of workers with family responsibilities are aspects of wider issues regarding the family and society which should be taken into account in national policies, and

Recognising the need to create effective equality of opportunity and treatment as between men and women workers with family responsibilities and between such workers and other workers, and

Considering that many of the problems facing all workers are aggravated in the case of workers with family responsibilities and recognising the need to improve the conditions of the latter both by measures responding to their special needs and by measures designed to improve the conditions of workers in general, and

Having decided upon the adoption of certain proposals with regard to equal opportunities and equal treatment for men and women workers: workers with family responsibilities, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-third day of June of the year one thousand nine hundred and eighty-one the following Convention, which may be cited as the Workers with Family Responsibilities Convention, 1981:

*Article 1*

1. This Convention applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

2. The provisions of this Convention shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

3. For the purposes of this Convention, the terms “dependent child” and “other member of the immediate family who clearly needs care or support” mean persons defined as such in each country by one of the means referred to in Article 9 of this Convention.

4. The workers covered by virtue of paragraphs 1 and 2 of this Article are hereinafter referred to as “workers with family responsibilities”.

*Article 2*

This Convention applies to all branches of economic activity and all categories of workers.

*Article 3*

1. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

2. For the purposes of paragraph 1 of this Article, the term “discrimination” means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

*Article 4*

With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities shall be taken—

- (a) to enable workers with family responsibilities to exercise their right to free choice of employment; and
- (b) to take account of their needs in terms and conditions of employment and in social security.

*Article 5*

All measures compatible with national conditions and possibilities shall further be taken—

- (a) to take account of the needs of workers with family responsibilities in community planning; and
- (b) to develop or promote community services, public or private, such as childcare and family services and facilities.

*Article 6*

The competent authorities and bodies in each country shall take appropriate measures to promote information and education which engender broader public understanding of the principle of equality of opportunity and treatment for men and women workers and of the problems of workers with family

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responsibilities, as well as a climate of opinion conducive to overcoming these problems.

*Article 7*

All measures compatible with national conditions and possibilities, including measures in the field of vocational guidance and training, shall be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

*Article 8*

Family responsibilities shall not, as such, constitute a valid reason for termination of employment.

*Article 9*

The provisions of this Convention may be applied by laws or regulations, collective agreements, works rules, arbitration awards, court decisions or a combination of these methods, or in any other manner consistent with national practice which may be appropriate, account being taken of national conditions.

*Article 10*

1. The provisions of this Convention may be applied by stages if necessary, account being taken of national conditions: Provided that such measures of implementation as are taken shall apply in any case to all the workers covered by Article 1, paragraph 1.

2. Each Member which ratifies this Convention shall indicate in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation in what respect, if any, it intends to make use of the faculty given by paragraph 1 of this Article, and shall state in subsequent reports the extent to which effect has been given or is proposed to be given to the Convention in that respect.

*Article 11*

Employers' and workers' organisations shall have the right to participate, in a manner appropriate to national conditions and practice, in devising and applying measures designed to give effect to the provisions of this Convention.

*Article 12*

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

*Article 13*

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

*Article 14*

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

*Article 15*

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

*Article 16*

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

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*Article 17*

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the conference the question of its revision in whole or in part.

*Article 18*

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 14 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

*Article 19*

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixty-seventh Session which was held at Geneva and declared closed the twenty-fourth day of June 1981.

IN FAITH WHEREOF we have appended our signatures this twenty-fifth day of June 1981.

## **Schedule 14—Parental leave**

Section 170KB

### **Part 1—Preliminary**

#### **1 Basic Principles**

- (1) Under this Schedule, an employee who gives birth to a child, and that employee's spouse, are entitled to unpaid parental leave totalling 52 weeks to care for the newborn child.
- (2) However, an employee's entitlement to leave under this Schedule is reduced by his or her other parental leave entitlements (for example, under an award or under a State law).
- (3) To obtain parental leave under this Schedule, an employee must satisfy requirements relating to:
  - (a) length of service;
  - (b) notice periods;
  - (c) information and documentation.
- (4) Except for a period of one week at the time of the birth, an employee and his or her spouse must take parental leave at different times.
- (5) An employee may take other leave (for example, annual leave) in conjunction with parental leave, but this will reduce the amount of parental leave he or she may take.
- (6) Parental leave may be varied in certain circumstances. In general, if a variation is foreseeable, an employee must give notice of it, but if a variation is not foreseeable notice is not required (for example, in the case of a premature birth).
- (7) Cancellation of parental leave by the employer is limited to situations where the employee will not become, or ceases to be, the child's primary care-giver, or where there has been a mistake in calculating the amount of leave to which the employee is entitled.
- (8) An employee who takes parental leave is, in most circumstances, entitled to return to the position which he or she held before the leave was taken.

- (9) Parental leave does not break an employee's continuity of service.

## 2 Definitions

In this Schedule:

**employee** includes a part-time employee, but not a casual or seasonal employee.

**continuous service** means service (otherwise than as a casual or seasonal employee) under an unbroken contract of employment, and includes a period of leave, or a period of absence, authorised:

- (a) by the employer; or
- (b) by an award or order of a court or tribunal that has power to fix wages and other terms and conditions of employment, or a workplace agreement certified by such a body; or
- (c) by a contract of employment; or
- (d) by this Schedule or another law of the Commonwealth or of a State or a Territory.

**law** includes an unwritten law.

**long paternity leave** means Schedule 14 long paternity leave or any other leave (however described):

- (a) to which an employee is entitled, or that has been applied for by or granted to an employee, in respect of the birth of a child of his spouse, otherwise than under this Schedule (for example, under another law of the Commonwealth or of a State or Territory, or under an award, order or agreement); and
- (b) that is of a kind analogous to Schedule 14 long paternity leave, or would be of such a kind but for one or more of the following:
  - (i) it is paid leave;
  - (ii) differences in the rules governing eligibility for it;
  - (iii) differences in the period or periods for which it can be taken.

**maternity leave** means Schedule 14 maternity leave or any other leave (however described):

- (a) to which an employee is entitled, or that has been applied for by or granted to an employee, in respect of her pregnancy or

Clause 2

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the birth of her child, otherwise than under this Schedule (for example, under another law of the Commonwealth or of a State or Territory, or under an award, order or agreement); and

- (b) that is of a kind analogous to Schedule 14 maternity leave, or would be of such a kind but for one or more of the following:
  - (i) it is paid leave;
  - (ii) it can begin before the estimated date of birth;
  - (iii) differences in the rules governing eligibility for it;
  - (iv) differences in the period or periods for which it can be taken.

***medical certificate*** means a certificate signed by a registered medical practitioner.

***parental leave*** means maternity leave or paternity leave.

***paternity leave*** means short paternity leave or long paternity leave.

***short paternity leave*** means Schedule 14 short paternity leave or any other leave (however described):

- (a) to which an employee is entitled, or that has been applied for by or granted to an employee, in respect of the birth of a child of his spouse, otherwise than under this Schedule (for example, under another law of the Commonwealth or of a State or Territory, or under an award, order or agreement); and
- (b) that is of a kind analogous to Schedule 14 short paternity leave, or would be of such a kind but for one or more of the following:
  - (i) it is paid leave;
  - (ii) differences in the rules governing eligibility for it;
  - (iii) differences in the period or periods for which it can be taken.

***Schedule 14 long paternity leave*** has the meaning given by clause 13.

***Schedule 14 maternity leave*** has the meaning given by subclause 3 (1).



Clause 2

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*Schedule 14 short paternity leave* has the meaning given by clause 13.

*spouse*, in relation to an employee, includes a person of the opposite sex to the employee who lives with the employee in a marriage-like relationship, although not legally married to the employee.

## Part 2—Maternity leave

### 3 Entitlement to maternity leave

- (1) Subject to this Schedule, an employee who becomes pregnant is entitled to a single period of unpaid leave (*Schedule 14 maternity leave*) in respect of the birth of the child.
- (2) An employer must grant Schedule 14 maternity leave to an employee in accordance with clause 4 if:
  - (a) at least 10 weeks before the estimated date of birth, she notifies the employer in writing of that date; and
  - (b) she applies in writing for the leave; and
  - (c) the application specifies the first and last days of the period of leave; and
  - (d) the first day of the period of leave is the estimated date of birth or a later day; and
  - (e) she submits the application at least 4 weeks before the first day of the period of leave; and
  - (f) she submits with the application a medical certificate that:
    - (i) states that she is pregnant and specifies the estimated date of birth; or
    - (ii) states that she has given birth to a living child and specifies the date of birth;as the case requires; and
  - (g) she submits with the application a statutory declaration specifying:
    - (i) any period of short paternity leave for which her spouse intends to apply, or has applied, in respect of the birth of the child; and
    - (ii) the first and last days of any period of long paternity leave for which her spouse intends to apply, or has applied, in respect of the birth of the child; and
    - (iii) the first and last days of each period of annual leave, or long service leave, for which her spouse intends to apply, or has applied, instead of, or in conjunction with, such paternity leave;

and stating:

- (iv) that she will be the child's primary care-giver throughout the period of maternity leave; and
- (v) that she will not engage in any conduct inconsistent with her contract of employment while on maternity leave; and
- (h) it is reasonable to expect that she will complete, or she had completed, as the case requires, a period of at least 12 months continuous service with the employer on the day before the date notified under paragraph (a).

(3) Paragraphs (2)(a) and (h) do not apply if:

- (a) because the child was premature, or for some other compelling reason, it was not reasonably practicable for the employee to comply with paragraph (2)(a); and
- (b) if it was reasonably practicable for the employee to give to the employer, before the actual date of birth, written notice of the estimated date of birth—she did so as soon as reasonably practicable; and
- (c) otherwise—the medical certificate submitted under paragraph (2)(f) also specifies the date that, as at the 70th day before the actual date of birth, was the estimated date of birth; and
- (d) it is reasonable to expect that the employee will complete, or the employee had completed, as the case requires, 12 months continuous service with the employer on the day before the date notified under paragraph (b), or specified under paragraph (c), of this subclause.

(4) Paragraph (2)(e) does not apply if:

- (a) because the child was premature, or for some other compelling reason, it was not reasonably practicable for the employee to comply with that paragraph; and
- (b) the employee submits the application as soon as reasonably practicable before, on or after the first day of the period of leave; and
- (c) if the child is born before the employee submits the application—the first day of the period of leave is the date of the child's birth or a later day.

If paragraph (c) of this subclause applies, paragraph (2)(d) does not apply.

Clause 4

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- (5) If, because of paragraph (4)(c), the first day of the period of leave is earlier than the date notified under paragraph (2)(a) or (3)(b) or specified under paragraph (3)(c), a reference in paragraph (2)(h) or (3)(d) or clause 9 to 12 months continuous service is taken to be a reference to a period of continuous service equal to 12 months reduced by the period beginning on the first day of the period of leave and ending on that date.
- (6) If an employee applies under subclause (2) for maternity leave (*the substitute leave*) to be taken instead of maternity leave (*the original leave*) for which she has already applied under that subclause, then:
  - (a) if a document submitted with the application for the original leave complies with paragraph (2)(f) or (g) as applying in relation to the application for the substitute leave, the document is taken to have also been submitted with the latter application; and
  - (b) if the employer grants the substitute leave, the employer:
    - (i) must cancel the original leave if it has already been granted; or
    - (ii) must not grant it if it has not already been granted.

**4 What maternity leave must the employer grant?**

- (1) The period of Schedule 14 maternity leave that clause 3 requires an employer to grant to an employee:
  - (a) if the child has not yet been born—must begin on the later of:
    - (i) the day specified in the application as the first day of the period of leave; or
    - (ii) the estimated date of birth;and must not extend beyond the first anniversary of the estimated date of birth; and
  - (b) otherwise—must begin on the later of:
    - (i) the day specified in the application as the first day of the period of leave; or
    - (ii) the child's date of birth;and must not extend beyond the child's first birthday; and
  - (c) must not overlap with a period of leave (other than short paternity leave) specified in the relevant statutory declaration; and

- (d) subject to the preceding paragraphs, must be a continuous period equal to the shorter of:
  - (i) the period applied for;
  - (ii) the period of entitlement.
- (2) The period of entitlement is 52 weeks less the total of:
  - (a) each period of unpaid leave, or paid sick leave, other than maternity leave, that the employer has already granted to the employee in respect of the same pregnancy; and
  - (b) each period of annual leave, or long service leave, that the employee has applied for instead of, or in conjunction with, maternity leave in respect of the pregnancy; and
  - (c) each period of leave specified in the relevant statutory declaration.

#### **5 Entitlement under clauses 3 and 4 to be reduced by other maternity leave available to employee**

- (1) This section applies if, had this Schedule not been enacted:
  - (a) an employee could have applied, in respect of her pregnancy or the birth of her child, for maternity leave to which paragraphs (a) and (b) of the definition of *maternity leave* in clause 2 applies; and
  - (b) if she had so applied in accordance with the rules governing that maternity leave, she would have a legally enforceable right to a period of such leave;whether or not she has in fact so applied.
- (2) The period of leave referred to in paragraph (1)(b) is called ***the period of alternative leave***.
- (3) The period (if any) of Schedule 14 maternity leave that clauses 3 and 4 would, but for this clause, require the employer to grant to the employee in respect of the birth of the child is called ***the unadjusted period of maternity leave***.
- (4) If the period of alternative leave is as long as, or longer than, the unadjusted period of maternity leave, the employer must not grant maternity leave to the employee under clauses 3 and 4 in respect of the birth.

**Clause 6**

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- (5) Otherwise, the employer must grant to the employee, instead of the unadjusted period of maternity leave, a period of maternity leave that:
- (a) equals the difference between the unadjusted period of maternity leave and the period of alternative leave; and
  - (b) begins immediately after the period of alternative leave if the employer grants it; and
  - (c) in other respects complies with clause 4.

Note: This clause assumes that an employee will make a single application for a composite period of parental leave to which she is entitled, and that the application will be made in accordance with both this Schedule and the rules governing the other kind of parental leave for which the employee is applying.

**6 Taking annual leave or long service leave instead of, or in conjunction with, maternity leave**

If an employee (*the mother*) applies to take annual leave, or long service leave, instead of, or in conjunction with, Schedule 14 maternity leave, the employer must grant the annual leave or long service leave if:

- (a) had this Schedule not been enacted, the employer would have been obliged to grant it (for example, because of some other law of the Commonwealth or of a State or Territory); or
- (b) the total of the following does not exceed 52 weeks:
  - (i) the period of annual leave or long service leave;
  - (ii) each period of annual leave, or long service leave, that the employer has already granted to the mother instead of, or in conjunction with, the maternity leave;
  - (iii) the period of maternity leave;
  - (iv) each period of unpaid leave, or paid sick leave, other than maternity leave, that the employer has already granted to the mother in respect of the same pregnancy;
  - (v) each period of leave specified under paragraph 3(2)(g) in the relevant statutory declaration.

**7 Extension of maternity leave**

- (1) An employee may apply in writing for an extension of Schedule 14 maternity leave granted to her.

- (2) The employer must grant the application if:
  - (a) it is given to the employer at least 14 days before the last day of the period of leave; and
  - (b) it specifies the first or last day of the extended period of leave, as the case requires; and
  - (c) unless the matters referred to in subparagraphs 3(2)(g)(i), (ii) and (iii) are still as stated in the relevant statutory declaration—the employee submits with the application for the extension a statutory declaration stating the matters referred to in those subparagraphs; and
  - (d) the period of leave, if extended in accordance with the application, would not exceed the period of entitlement under clause 4, calculated as at the time of granting the application for the extension.
- (3) The period of maternity leave may be extended again only by agreement between the employer and the employee.

## **8 Shortening of maternity leave**

- (1) An employee may apply in writing to shorten the period of Schedule 14 maternity leave granted to her.
- (2) The employer may grant the application if it specifies the last day of the shortened period of leave.

## **9 Effect on maternity leave of failure to complete 12 months continuous service**

If Schedule 14 maternity leave has been granted on the basis that it is reasonable to expect that the employee will complete a period of at least 12 months continuous service with the employer on a particular day, the employer may cancel the leave if the employee does not complete such a period on that day.

## **10 Effect on maternity leave if pregnancy terminates or child dies**

- (1) This clause applies if an employer has granted Schedule 14 maternity leave to an employee and:
  - (a) the pregnancy terminates otherwise than by the birth of a living child; or

**Clause 11**

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- (b) the employee gives birth to a living child but the child later dies.
- (2) The employer may cancel the maternity leave at any time before it begins.
- (3) If the maternity leave has begun, the employee may notify the employer in writing that she wishes to return to work.
- (4) If she does so, the employer must notify her in writing of the day on which she is to return to work. That day must be within 4 weeks after the employer received the notice under subclause (3).
- (5) If the maternity leave has begun, the employer may notify the employee in writing that she must return to work on a specified day that is not less than 4 weeks after the notice is given.
- (6) If the employee returns to work, the employer must cancel the rest of the maternity leave.

**11 Effect on maternity leave if mother ceases to be the primary care-giver**

- (1) This clause applies if:
  - (a) during a substantial period beginning on or after the beginning of an employee's Schedule 14 maternity leave, the employee is not the child's primary care-giver; and
  - (b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child's primary care-giver within a reasonable period.
- (2) The employer may notify the employee in writing that she must return to work on a specified day that is not less than 4 weeks after the notice is given.
- (3) If the employee returns to work, the employer must cancel the rest of the maternity leave.

**12 Return to work after maternity leave**

- (1) This clause applies when an employee returns to work after a period of Schedule 14 maternity leave.



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Clause 12

- (2) The employer must employ her in the position she held:
  - (a) if she was transferred to a safe job because of her pregnancy—immediately before the transfer; or
  - (b) if she began working part-time because of the pregnancy—immediately before she so began; or
  - (c) otherwise—immediately before she began maternity leave.
- (3) If that position no longer exists but she is qualified for, and can perform the duties of, other positions in the employer's employment, the employer must employ her in whichever of those positions is nearest in status and remuneration to the position referred to in subclause (2).

## Part 3—Paternity leave

### 13 Entitlement to paternity leave

Subject to this Schedule, an employee is entitled, in respect of the birth of a child of his spouse, to each of the following:

- (a) a period of unpaid paternity leave (*Schedule 14 short paternity leave*) beginning on the child's date of birth and lasting not more than one week;
- (b) a period of unpaid paternity leave (*Schedule 14 long paternity leave*) in order to be the child's primary care-giver.

### 14 Short paternity leave

- (1) An employer must grant Schedule 14 short paternity leave to an employee if:
  - (a) at least 10 weeks before the estimated date of birth, he gives to the employer:
    - (i) a written notice stating his intention to apply for the leave and specifying how long the leave is to last, being a period of not more than one week; and
    - (ii) a medical certificate that names his spouse, states that she is pregnant and specifies the estimated date of birth; and
  - (b) he applies in writing for the leave; and
  - (c) the application specifies the first and last days of the period of leave; and
  - (d) he submits the application as soon as reasonably practicable on or after the first day of the period of leave; and
  - (e) the period of leave does not exceed the period specified under paragraph (a); and
  - (f) unless the first day of the period of leave is the same as the date specified under subparagraph (a)(ii):
    - (i) he submits with the application a medical certificate that names his spouse and specifies the actual date of birth; and
    - (ii) the first day of the period of leave is that day; and

- (g) it is reasonable to expect that he will complete, or he had completed, as the case requires, a period of at least 12 months continuous service with the employer on the day before the date specified under subparagraph (a)(ii).
- (2) Paragraphs (1)(a) and (g) do not apply if:
  - (a) because the child was premature, or for some other compelling reason, it was not reasonably practicable for the employee to comply with paragraph (1)(a); and
  - (b) if it was reasonably practicable for the employee to give to the employer, before the actual date of birth, the notice and certificate referred to in that paragraph—he did so as soon as reasonably practicable; and
  - (c) otherwise—the medical certificate submitted under subparagraph (1)(f)(i) also specifies the date that, as at the 70th day before the actual date of birth, was the estimated date of birth; and
  - (d) it is reasonable to expect that the employee will complete, or the employee had completed, as the case requires, 12 months continuous service with the employer on the day before the estimated date of birth specified in the certificate given under paragraph (b), or specified under paragraph (c), of this subclause.

## **15 Long paternity leave**

- (1) An employer must grant Schedule 14 long paternity leave to an employee if:
  - (a) he applies in writing for the leave; and
  - (b) the application specifies the first and last days of the period of leave; and
  - (c) he submits the application at least 10 weeks before the first day of the period of leave; and
  - (d) he submits with the application a medical certificate that names his spouse and:
    - (i) states that she is pregnant and specifies the estimated date of birth; or
    - (ii) states that she has given birth to a living child and specifies the date of birth;as the case requires; and

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- (e) he submits with the application a statutory declaration specifying the first and last days of:
    - (i) each period of unpaid leave, or paid sick leave, other than maternity leave, for which the spouse intends to apply, or has applied, in respect of the pregnancy; and
    - (ii) any period of maternity leave for which the spouse intends to apply, or has applied, in respect of the birth of the child; and
    - (iii) each period of annual leave, or long service leave, for which the spouse intends to apply, or has applied, instead of, or in conjunction with, maternity leave; and stating:
      - (iv) that he will be the child's primary care-giver throughout the period of paternity leave; and
      - (v) that he will not engage in any conduct inconsistent with his contract of employment while on paternity leave; and
  - (f) it is reasonable to expect that he will complete, or he had completed, as the case requires, a period of at least 12 months continuous service with the employer on the day before the first day of the period of leave.
- (2) Paragraph (1)(c) does not apply if:
- (a) because the child was premature, or for some other compelling reason, it was not reasonably practicable for the employee to submit the application at least 10 weeks before the first day of the period of leave; and
  - (b) the employee submits the application as soon as reasonably practicable before, on or after that day.
- (3) The period of Schedule 14 long paternity leave:
- (a) if the child has not yet been born—must begin on the later of:
    - (i) the day specified in the application as the first day of the period of leave; or
    - (ii) the estimated date of birth;and must not extend beyond the first anniversary of the estimated date of birth; and
  - (b) otherwise—must begin on the later of:
    - (i) the day specified in the application as the first day of the period of leave; or

- (ii) the child's date of birth;  
and must not extend beyond the child's first birthday; and
- (c) must not overlap with a period of leave specified in the relevant statutory declaration; and
- (d) subject to the preceding paragraphs, must be a continuous period equal to the shorter of:
  - (i) the period applied for;
  - (ii) the period of entitlement.
- (4) The period of entitlement is 52 weeks less the total of:
  - (a) if the employee has given the employer notice of his intention to apply for a period of short paternity leave in respect of the birth of the child—that period; and
  - (b) each period of annual leave, or long service leave, that the employee has applied to take instead of, or in conjunction with, long paternity leave in respect of the birth of the child; and
  - (c) each period of leave specified in the relevant statutory declaration.

**16 Entitlement under clause 14 or 15 to be reduced by other paternity leave available to employee**

- (1) This clause applies if, had this Schedule not been enacted:
  - (a) an employee could have applied, in respect of the birth of a child of his spouse, for short paternity leave or long paternity leave to which paragraphs (a) and (b) of the definition of ***short paternity leave*** or ***long paternity leave***, as the case may be, in clause 2 apply; and
  - (b) if he had so applied in accordance with the rules governing that paternity leave, he would have a legally enforceable right to a period of such leave;whether or not he has in fact so applied.
- (2) The period of leave referred to in paragraph (1)(b) is called ***the period of alternative leave***.
- (3) The period of Schedule 14 short paternity leave or Schedule 14 long paternity leave, as the case may be, that clause 14 or 15 would, but for this clause, require the employer to grant to the

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employee in respect of the birth of the child is called the *unadjusted period of paternity leave*.

- (4) If the period of alternative leave is as long as, or longer than, the unadjusted period of paternity leave, the employer must not grant leave under clause 14 or 15, as the case may be, in respect of the birth.
- (5) Otherwise, the employer must grant to the employee, instead of the unadjusted period of paternity leave, a period of short paternity leave, or long paternity leave, as the case may be, that:
  - (a) equals the difference between the unadjusted period of paternity leave and the period of alternative leave; and
  - (b) begins immediately after the period of alternative leave if the employer grants it; and
  - (c) in other respects complies with clause 14 or 15, as the case may be.

Note: This clause assumes that an employee will make a single application for a composite period of parental leave to which he is entitled, and that the application will be made in accordance with both this Schedule and the rules governing the other kind of parental leave for which the employee is applying.

**17 Taking annual leave or long service leave instead of, or in conjunction with, paternity leave**

If an employee applies to take annual leave, or long service leave, instead of, or in conjunction with, Schedule 14 short paternity leave or Schedule 14 long paternity leave in respect of the birth of a child of the employee's spouse, the employer must grant the annual leave or long service leave if:

- (a) had this Schedule not been enacted, the employer would have been obliged to grant it (for example, because of some other law of the Commonwealth or of a State or a Territory); or
- (b) the total of the following does not exceed 52 weeks:
  - (i) the period of annual leave or long service leave;
  - (ii) each period of annual leave, or long service leave, that the employer has already granted to the employee instead of, or in conjunction with, the paternity leave;
  - (iii) each period of paternity leave that the employer has already granted to the employee in respect of the birth;

- (iv) each period of leave specified under paragraph 15(1)(e) in the relevant statutory declaration.

## **18 Extension of long paternity leave**

- (1) An employee may apply in writing for an extension of Schedule 14 long paternity leave granted to him.
- (2) The employer must grant the application if:
  - (a) it is given to the employer at least 14 days before the last day of the period of leave; and
  - (b) it specifies the last day of the extended period of leave; and
  - (c) unless the matters referred to in subparagraphs 15(1)(e)(i), (ii) and (iii) are still as stated in the statutory declaration submitted with the application for the leave—the employee submits with the application for the extension a statutory declaration stating the matters referred to in those subparagraphs; and
  - (d) the period of leave, if extended in accordance with the application, would not exceed the period of entitlement under subclause 15(4), calculated as at the time of granting the application for the extension.
- (3) The period of paternity leave may be extended again only by agreement between the employer and the employee.

## **19 Shortening of paternity leave**

- (1) An employee may apply in writing to shorten the period of Schedule 14 paternity leave granted to him.
- (2) The employer may grant the application if it specifies the last day of the shortened period of leave.

## **20 Effect on long paternity leave of failure to complete 12 months continuous service**

If Schedule 14 long paternity leave has been granted on the basis that it is reasonable to expect that the employee will complete a period of at least 12 months continuous service with the employer on a particular day, the employer may cancel the leave if the employee does not complete such a period on that day.

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**21 Effect on long paternity leave if pregnancy terminates or child dies**

- (1) This clause applies if an employer has granted Schedule 14 long paternity leave to an employee and:
  - (a) the employee's spouse's pregnancy terminates otherwise than by the birth of a living child; or
  - (b) the employee's spouse gives birth to a living child but the child later dies.
- (2) The employer may cancel the leave at any time before it begins.
- (3) If the leave has begun, the employee may notify the employer in writing that he wishes to return to work.
- (4) If he does so, the employer must notify him in writing of the day on which he is to return to work. That day must be within 4 weeks after the employer received the notice under subclause (3).
- (5) If the leave has begun, the employer may notify the employee in writing that he must return to work on a specified day that is not less than 4 weeks after the notice is given.
- (6) If the employee returns to work, the employer must cancel the rest of the leave.

**22 Effect on paternity leave of ceasing to be the primary care-giver**

- (1) This clause applies if:
  - (a) during a substantial period beginning on or after the beginning of an employee's Schedule 14 long paternity leave, the employee is not the child's primary care-giver; and
  - (b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child's primary care-giver within a reasonable period.
- (2) The employer may notify the employee in writing that he must return to work on a specified day that is not less than 4 weeks after the notice is given.
- (3) If the employee returns to work, the employer must cancel the rest of the leave.



## **23 Return to work after paternity leave**

- (1) This clause applies when an employee returns to work after a period of Schedule 14 long paternity leave.
- (2) The employer must employ him in the position he held immediately before that period.
- (3) If that position no longer exists but he is qualified for, and can perform the duties of, other positions in the employer's employment, the employer must employ him in whichever of those positions is nearest in status and remuneration to the position referred to in subclause (2).

## Part 4—General

### 24 Employee's duty if excessive leave granted or if maternity leave and paternity leave overlap

- (1) This clause applies if the total of the following exceeds 52 weeks:
  - (a) any period of maternity leave granted by an employer to an employee (*the mother*) in respect of a pregnancy;
  - (b) each period of annual leave or long service leave granted by the employer to the mother instead of, or in conjunction with, such maternity leave;
  - (c) each period of unpaid leave, or paid sick leave, other than maternity leave, granted by the employer to the mother in respect of the same pregnancy;
  - (d) each period of paternity leave granted by an employer to the mother's spouse in respect of the birth of the child;
  - (e) each period of annual leave or long service leave granted, by the employer referred to in paragraph (e), to the mother's spouse instead of, or in conjunction with, such paternity leave.
- (2) This clause also applies if a period of leave of a kind referred to in paragraph (1)(a), (b) or (c) overlaps with a period of leave of a kind referred to in paragraph (1)(d) or (e).
- (3) The mother must give to her employer a written notice that:
  - (a) if subclause (1) applies—states that the total exceeds 52 weeks and specifies the amount of the excess; and
  - (b) if subclause (2) applies—specifies the period of overlap; and
  - (c) sets out how she suggests the employer vary or cancel leave granted to her (except in so far as she has already taken it) so as to reduce or remove the excess or overlap; and
  - (d) unless the variations and cancellations suggested under paragraph (c) will remove the excess or overlap—sets out the suggestions her spouse has made or will make under paragraph (4)(c).

- (4) The mother's spouse must give to his employer a written notice that:
  - (a) if subclause (1) applies—states that the total exceeds 52 weeks and specifies the amount of the excess; and
  - (b) if subclause (2) applies—specifies the period of overlap; and
  - (c) sets out how he suggests the employer vary or cancel leave granted to him (except in so far as he has already taken the leave) so as to remove the excess or overlap; and
  - (d) unless the variations or cancellations suggested under paragraph (c) will remove the excess or overlap—specifies the suggestions that the mother has made or will make under paragraph (3)(c).
- (5) The variations and cancellations suggested under this clause must be such that, if they are all made, the excess or overlap will be removed.
- (6) An employer who receives a notice under subclause (3) or (4) may vary or cancel periods of leave as suggested in the notice, or as agreed with the mother or her spouse, as the case may be.

## **25 Employer to warn replacement employee that employment is only temporary**

An employer must not employ a person:

- (a) to replace an employee while he or she is on parental leave; or
- (b) to replace an employee who, while another employee is on parental leave, is to perform the duties of the position held by the other employee;

unless the employer has informed the person:

- (c) that his or her employment is only temporary; and
- (d) about the rights of the employee who is on parental leave.

## **26 Parental leave and continuity of service**

A period of parental leave does not break an employee's continuity of service, but does not otherwise count as service except:

- (a) for the purpose of determining the employee's entitlement to a later period of parental leave; or

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- (b) as expressly provided in a law of the Commonwealth or of a State or Territory, or in an award, order, agreement or instrument; or
- (c) as prescribed by the regulations.

**27 Effect of Schedule on other laws**

To avoid doubt, this Schedule has effect despite:

- (a) a law of a State or Territory; or
- (b) an award, order, agreement or instrument;

but is not intended to exclude or limit the operation of such a law, or of an award, order, agreement or instrument, in so far as that law, award, order, agreement or instrument can operate concurrently with this Schedule.

**Table of Acts****Notes to the *Workplace Relations Act 1996*****Note 1**

The *Workplace Relations Act 1996* as shown in this compilation comprises Act No. 86, 1988 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequential and Transitional) Act 2001*, see Act No. 55, 2001, Schedule 1 of the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*, see Act No. 105, 2002 and Schedule 3A (items 7–10) and Schedule 4 of the *Workplace Relations Amendment (Work Choices) Act 2005*, see Act No. 153, 2005.

All relevant information pertaining to application, saving or transitional provisions prior to 25 November 1996 is not included in this compilation. For subsequent information see Table A.

The *Workplace Relations Act 1996* was modified by the Industrial Relations (Christmas Island) Regulations (1992 No. 225 as amended). The modifications are not incorporated in this compilation.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Industrial Relations Act 1988</i>	86, 1988	8 Nov 1988	Ss. 1–6 and 8–359: 1 Mar 1989 (see <i>Gazette</i> 1989, No. S53) Remainder: 1 July 1992 (see <i>Gazette</i> 1992, No. S182)	
<i>A.C.T. Self-Government (Consequential Provisions) Act 1988</i>	109, 1988	6 Dec 1988	S. 32: 11 May 1989 (see <i>Gazette</i> 1989, No. S164) (a)	—
<b>as amended by</b> <i>Australian Capital Territory Government Service (Consequential Provisions) Act 1994</i>	92, 1994	29 June 1994	1 July 1994 (see <i>Gazette</i> 1994, No. S256)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Federal Police Legislation Amendment Act (No. 2) 1989</i>	153, 1989	17 Dec 1989	Ss. 1, 2, 61 and 62: Royal Assent S. 11: 1 July 1991 Ss. 38 and 71: 1 Jan 1991 Remainder: 1 Jan 1990 ( <i>see Gazette</i> 1989, No. S397)	—
<b>as amended by</b>				
<i>Crimes Legislation Amendment Act 1991</i>	28, 1991	4 Mar 1991	S. 74(1): Royal Assent (b)	—
<i>Petroleum (Australia-Indonesia Zone of Cooperation) (Consequential Provisions) Act 1990</i>	37, 1990	7 June 1990	18 Feb 1991 ( <i>see s. 2 and Gazette</i> 1991, No. S47)	—
<i>Remuneration and Allowances Act 1990</i>	71, 1990	20 June 1990	Ss. 9 and 10: 1 July 1990 Remainder: Royal Assent	—
<i>Industrial Relations Legislation Amendment Act (No. 2) 1990</i>	108, 1990	18 Dec 1990	Ss. 8, 13 and 21: 1 Feb 1991 ( <i>see s. 2(4) and Gazette</i> 1991, No. S18) Ss. 22–24: 1 Mar 1989 S. 26: 1 Jan 1990 S. 33: 25 Mar 1991 ( <i>see Gazette</i> 1991, No. S73) Remainder: Royal Assent	—
<i>Industrial Relations Legislation Amendment Act 1990</i>	19, 1991	23 Jan 1991	1 Feb 1991 ( <i>see Gazette</i> 1991, No. S18)	Ss. 10(2), (3), 12(2) and 18
<i>Industrial Relations Legislation Amendment Act (No. 2) 1991</i>	62, 1991	30 May 1991	Ss. 1 and 2: Royal Assent Schedule (Part 1 [in part], Part 2): 2 July 1991 ( <i>see Gazette</i> 1991, No. S182) Schedule (Part 3 [in part]): 1 Aug 1991 ( <i>see Gazette</i> 1991, No. S210) Schedule (Part 5): 1 Sept 1991 ( <i>see Gazette</i> 1991, No. S239) Remainder: 30 Nov 1991	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Industrial Relations Legislation Amendment Act 1991</i>	122, 1991	27 June 1991	Ss. 4(1), 10(b) and 15–20: 1 Dec 1988 Ss. 28(b)–(e), 30 and 31: 10 Dec 1991 ( <i>see Gazette</i> 1991, No. S332) Remainder: Royal Assent	S. 31(2)
<i>Remuneration and Allowances Legislation Amendment Act 1992</i>	52, 1992	22 June 1992	Ss. 13 and 14: 27 June 1991 Ss. 16 and 17(1): 20 June 1990 S. 17(2): 1 July 1990 S. 19(1): 1 Jan 1990 Remainder: Royal Assent	Ss. 8–12
<i>Superannuation Guarantee (Consequential Amendments) Act 1992</i>	92, 1992	30 June 1992	1 July 1992	—
<i>Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992</i>	94, 1992	30 June 1992	S. 3: 1 July 1990 Remainder: Royal Assent	—
<i>Industrial Relations Legislation Amendment Act 1992</i>	109, 1992	9 July 1992	Ss. 3, 4(a), (b), (f), 6–26 and Schedule: 23 July 1992 ( <i>see Gazette</i> 1992, No. S206) Ss. 4(c), (e) and 5: 20 Aug 1992 ( <i>see Gazette</i> 1992, No. S236) S. 4(d): 9 Jan 1993 Remainder: Royal Assent	Ss. 19 and 20
<b>as amended by</b>				
<i>Industrial Relations Legislation Amendment Act (No. 2) 1992</i>	215, 1992	24 Dec 1992	( <i>see</i> 215, 1992 below)	—
<i>Human Rights and Equal Opportunity Legislation Amendment Act 1992</i>	132, 1992	30 Oct 1992	26 Nov 1992 ( <i>see</i> s. 2 and <i>Gazette</i> 1992, No. S346)	—
<i>Sex Discrimination and other Legislation Amendment Act 1992</i>	179, 1992	16 Dec 1992	13 Jan 1993	Ss. 2(2) and 4(4)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Qantas Sale Act 1992</i>	196, 1992	21 Dec 1992	Schedule (Parts 3, 6): (c) Schedule (Part 4): 30 July 1995 (see <i>Gazette</i> 1995, No. S324) (c)	S. 2(6) (am. by 60, 1993, s. 4; 168, 1994, s. 3)
<b>as amended by</b>				
<i>Qantas Sale Amendment Act 1993</i>	60, 1993	3 Nov 1993	10 Mar 1993	—
<i>Qantas Sale Amendment Act 1994</i>	168, 1994	16 Dec 1994	Schedule (item 17): Royal Assent (d)	—
<i>Coal Industry Legislation Amendment Act 1992</i>	212, 1992	24 Dec 1992	Ss. 3 and 4: 4 Feb 1993 (see <i>Gazette</i> 1993, No. GN4) Remainder: Royal Assent	—
<i>Industrial Relations Legislation Amendment Act (No. 2) 1992</i>	215, 1992	24 Dec 1992	Ss. 34–40: 18 Feb 1991 Ss. 3–8 and 11–33: 21 Jan 1993 Remainder: Royal Assent	S. 6(2) and (3)
<i>Industrial Relations Reform Act 1993</i>	98, 1993	22 Dec 1993	Ss. 1, 2, 55 and 56: Royal Assent Ss. 17 and 80: 22 June 1994 Ss. 75 and 76: 2 Jan 1994 (see <i>Gazette</i> 1993, No. S400) Remainder: 30 Mar 1994 (see <i>Gazette</i> 1994, No. S104)	Ss. 2(3), 35, 60(2), 63–67 and 76(2)
<i>Industrial Relations Court (Judges' Remuneration) Act 1993</i>	104, 1993	22 Dec 1993	22 Dec 1993	—
<i>Industrial Relations and other Legislation Amendment Act 1993</i>	109, 1993	22 Dec 1993	Ss. 1, 2 and 58: Royal Assent S. 32: 5 Jan 1994 S. 34: 6 Sept 1991 S. 47: 24 Dec 1992 Remainder: 19 Jan 1994	—
<i>Industrial Relations Amendment Act 1994</i>	46, 1994	24 Mar 1994	24 Mar 1994	—



**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Industrial Relations Legislation Amendment Act 1994</i>	77, 1994	21 June 1994	Ss. 1 and 2: Royal Assent Ss. 5 and 6: 19 July 1994 Remainder: 18 Aug 1994 ( <i>see Gazette</i> 1994, No. S309)	—
<i>Industrial Relations Amendment Act (No. 2) 1994</i>	97, 1994	30 June 1994	30 June 1994	—
<i>Industrial Relations Legislation Amendment Act (No. 2) 1994</i>	158, 1994	15 Dec 1994	Schedule 1 (item 2): Royal Assent (e) Schedule 1 (items 6, 8–12, 14–19): 1 July 1995 ( <i>see Gazette</i> 1995, No. S256) (e) Schedule 1 (item 7): (e)	Sch. 1 (items 2, 14–19)
<b>as amended by</b>				
<i>Industrial Relations and other Legislation Amendment Act 1995</i>	168, 1995	16 Dec 1995	Schedule 6: 15 Jan 1996 ( <i>see Gazette</i> 1996, No. S16) (f)	—
<i>Evidence (Transitional Provisions and Consequential Amendments) Act 1995</i>	3, 1995	23 Feb 1995	S. 14: Royal Assent (g) S. 23: 18 Apr 1995 (g)	S. 14
<i>Industrial Relations and other Legislation Amendment Act 1995</i>	168, 1995	16 Dec 1995	Ss. 1–12, Schedules 5 and 7–10: Royal Assent S. 13: 13 Jan 1996 Remainder: 15 Jan 1996 ( <i>see Gazette</i> 1996, No. S16)	Sch. 2 (item 14)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Workplace Relations and Other Legislation Amendment Act 1996</i>	60, 1996	25 Nov 1996	Schedules 1, 2, 4, 6–8, 9 (item 2), 11, 12 (item 1), 13–15 and 20: 31 Dec 1996 ( <i>see Gazette</i> 1996, No. S535) Schedules 3 and 18: 5 Dec 1996 ( <i>see Gazette</i> 1996, No. S472) Schedule 5: 1 Jan 1997 Schedule 9 (item 1): ( <i>h</i> ) Schedule 10: 12 Mar 1997 ( <i>see Gazette</i> 1997, No. S87) Schedule 16 (items 1–89): 25 May 1997 Schedule 17: 17 Jan 1997 ( <i>see Gazette</i> 1997, No. S18) Remainder: Royal Assent	Sch. 4 (items 11–13), Sch. 5 (items 46–49, 50(1), (2), (4), 51(1)–(6), 51(8), 52, 53, 54(1), 55), Sch. 6 (item 17), Sch. 7 (items 12, 13), Sch. 8 (item 23), Sch. 9 (item 2(1)–(8), (10)), Sch. 11 (items 88, 89), Sch. 13 (item 16), Sch. 14 (item 41) and Sch. 17 (items 9–37) S. 2(2) and (6) (am. by 77, 1996, Sch. 3 [items 1, 2]) Sch. 5 (item 50(3)) (am. by 198, 1997, Sch. 1 [item 4]), Sch. 5 (item 51(7)) (am. by 119, 1999, Sch. 2 [item 1]), Sch. 5 (item 54(2)) (rep. by 119, 1999, Sch. 2 [item 2]), Sch. 9 (item 2(9)) (am. by 133, 1999, Sch. 1 [item 125]) [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as amended by</b>				
<i>Workplace Relations and Other Legislation Amendment Act (No. 2) 1996</i>	77, 1996	19 Dec 1996	(see 77, 1996 below)	—
<i>Workplace Relations and Other Legislation Amendment Act 1997</i>	198, 1997	11 Dec 1997	Schedule 7: 11 June 1998 Remainder: Royal Assent	—
<i>Workplace Relations Legislation Amendment (Youth Employment) Act 1999</i>	119, 1999	22 Sept 1999	Ss. 1–3: Royal Assent Remainder: 20 Oct 1999	—
<i>Human Rights Legislation Amendment Act (No. 1) 1999</i>	133, 1999	13 Oct 1999	Schedule 1 (item 125): 13 Apr 2000 (i)	—
<i>Workplace Relations and Other Legislation Amendment Act (No. 2) 1996</i>	77, 1996	19 Dec 1996	Schedule 1 (item 2): 31 Dec 1996 (see <i>Gazette</i> 1996, No. S535) Schedule 1 (items 3–5): 1 Jan 1997 (see <i>Gazette</i> 1996, No. S535) Schedule 2: 13 Mar 1997 (see <i>Gazette</i> 1997, No. S87) Schedule 3: (j) Remainder: Royal Assent	—
<i>Workplace Relations and Other Legislation Amendment Act 1997</i>	198, 1997	11 Dec 1997	Schedule 7: 11 June 1998 Remainder: Royal Assent	Sch. 5 (items 5, 8, 10) and Sch. 6 (items 14–18) [see Table A]
<i>Workplace Relations Legislation Amendment (Youth Employment) Act 1999</i>	119, 1999	22 Sept 1999	Ss. 1–3: Royal Assent Remainder: 20 Oct 1999	—
<i>Human Rights Legislation Amendment Act (No. 1) 1999</i>	133, 1999	13 Oct 1999	Ss. 1–3 and 21: Royal Assent S. 22 and Schedule 1 (items 53, 60): 10 Dec 1999 (see <i>Gazette</i> 1999, No. S598) Remainder: 13 Apr 2000	S. 18 [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 984–994): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (k)	—
<i>Australian Federal Police Legislation Amendment Act 2000</i>	9, 2000	7 Mar 2000	2 July 2000 (see <i>Gazette</i> 2000, No. S328)	Sch. 3 (items 20, 34, 35) [see Table A]
<i>Timor Gap Treaty (Transitional Arrangements) Act 2000</i>	25, 2000	3 Apr 2000	S. 4 and Schedule 2 (item 42): 26 Oct 1999 (l)	S. 4 [see Table A]
<i>Jurisdiction of Courts Legislation Amendment Act 2000</i>	57, 2000	30 May 2000	Schedule 1 (item 91): 1 July 2000 (see <i>Gazette</i> 2000, No. GN25) (m)	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]
<i>Workplace Relations Amendment (Tallies) Act 2001</i>	7, 2001	22 Mar 2001	Schedule 1 (item 1): 23 Mar 2002 Remainder: Royal Assent	—
<i>Corporations (Repeals, Consequentials and Transitionals) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 571–573): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (n)	Ss. 4–14
<i>Workplace Relations Amendment (Termination of Employment) Act 2001</i>	100, 2001	22 Aug 2001	Schedule 1: 30 Aug 2001 (see <i>Gazette</i> 2001, No. S357) Remainder: Royal Assent	Sch. 1 (items 41–50) [see Table A]
<b>as amended by</b>				
<i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 2 (items 37, 38): (o)	—
<i>Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Act 2001</i>	142, 2001	1 Oct 2001	S. 4 and Schedule 1 (items 140–158, 160–202): 2 Oct 2001 (p) Schedule 1 (item 159): (p)	S. 4 [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001</i>	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97) [see Table A]
<i>Workplace Relations Amendment (Registration and Accountability of Organisations) Act 2002</i>	104, 2002	14 Nov 2002	Schedule 1: 12 May 2003 (see <i>Gazette</i> 2002, No. GN49) Remainder: Royal Assent	—
<i>Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002</i>	105, 2002	14 Nov 2002	Schedules 1, 2 and 4 (items 3–6): 12 May 2003 (see s. 2(1) and <i>Gazette</i> 2002, No. GN49) Schedule 4 (items 1, 2): 12 Dec 2002	Sch. 1 [see Note 1] Sch. 2 (item 114) [see Table A]
<i>Workplace Relations Amendment (Genuine Bargaining) Act 2002</i>	123, 2002	6 Dec 2002	Schedule 1: 7 Feb 2003 (see <i>Gazette</i> 2003, No. S34) Remainder: Royal Assent	Sch. 1 (items 3A, 3, 4) [see Table A]
<i>Workplace Relations Legislation Amendment Act 2002</i>	127, 2002	11 Dec 2002	Schedule 3 (items 24, 28, 31, 35, 42, 44, 46–48, 57, 60): Royal Assent Schedule 3 (items 25–27, 52): 29 May 2003 Schedule 3 (items 29, 30, 45, 61): 11 June 2003 Schedule 3 (items 33, 36–40, 43, 58, 59): 14 Feb 2003 (see <i>Gazette</i> 2003, No. GN6) Schedule 3 (items 49–51): 12 Dec 2002	Sch. 3 (items 57–61) [see Table A]
<i>Petroleum (Timor Sea Treaty) (Consequential Amendments) Act 2003</i>	10, 2003	2 Apr 2003	Schedule 1 (items 1–52, 54–75, 78–82): 20 May 2002 Remainder: Royal Assent	—
<i>Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Act 2003</i>	20, 2003	11 Apr 2003	Schedule 1: 9 May 2003 Remainder: Royal Assent	Sch. 1 (items 13–16) [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act (No. 1) 2003</i>	64, 2003	30 June 2003	Schedule 5 (item 7): 1 July 2003	—
<i>Workplace Relations Amendment (Protection for Emergency Management Volunteers) Act 2003</i>	76, 2003	15 July 2003	16 July 2003	Sch. 1 (item 6) [see Table A]
<i>Workplace Relations Amendment (Fair Termination) Act 2003</i>	104, 2003	16 Oct 2003	Schedules 1 and 2: 27 Nov 2003 (see <i>Gazette</i> 2003, No. GN47) Remainder: Royal Assent	Sch. 1 (item 20) [see Table A]
<i>Workplace Relations Amendment (Improved Protection for Victorian Workers) Act 2003</i>	137, 2003	17 Dec 2003	Schedules 1–3: 1 Jan 2004 (see <i>Gazette</i> 2003, No. S502) Schedule 4: (q) Remainder: Royal Assent	Sch. 1 (items 27–36), Sch. 2 (item 4), Sch. 3 (items 10–13) and Sch. 4 (item 5) [see Table A]
<i>Workplace Relations Amendment (Transmission of Business) Act 2004</i>	10, 2004	11 Mar 2004	Schedule 1: 30 Apr 2004 (see <i>Gazette</i> 2004, No. GN17) Remainder: Royal Assent	—
<i>Workplace Relations Amendment (Improved Remedies for Unprotected Action) Act 2004</i>	11, 2004	11 Mar 2004	Schedule 1: 30 Apr 2004 (see <i>Gazette</i> 2004, No. GN17) Remainder: Royal Assent	—
<i>Age Discrimination (Consequential Provisions) Act 2004</i>	40, 2004	21 Apr 2004	Schedule 1 (item 13): 23 June 2004 (see s. 2)	—
<i>Law and Justice Legislation Amendment Act 2004</i>	62, 2004	26 May 2004	Schedule 1 (items 57–59): 27 May 2004	Sch. 1 (item 59) [see Table A]
<i>Workplace Relations Amendment (Codifying Contempt Offences) Act 2004</i>	112, 2004	13 July 2004	Schedules 1–3: 10 Aug 2004 Schedules 1A and 4: 13 Jan 2005 Remainder: Royal Assent	Sch. 1 (item 6), Sch. 3 (item 25) and Sch. 5 (items 9–13) [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Workplace Relations Amendment (Agreement Validation) Act 2004</i>	155, 2004	15 Dec 2004	15 Dec 2004	Sch. 1 (item 3) [see Table A]
<i>Financial Framework Legislation Amendment Act 2005</i>	8, 2005	22 Feb 2005	S. 4 and Schedule 1 (items 495, 496): Royal Assent	S. 4 and Sch. 1 (item 496) [see Table A]
<i>Statute Law Revision Act 2005</i>	100, 2005	6 July 2005	Schedule 1 (items 84, 85): (r)	—
<i>Building and Construction Industry Improvement (Consequential and Transitional) Act 2005</i>	112, 2005	12 Sept 2005	Ss. 4, 5(1), (3), (4) and Schedule 1 (items 8, 9, 11): 9 Mar 2005 Remainder: Royal Assent	—
<i>Workplace Relations Amendment (Work Choices) Act 2005</i>	153, 2005	14 Dec 2005	Schedules 1, 2, 4 (items 3–24) and 5: [see Note 2] Remainder: Royal Assent	Sch. 3A (items 7–10) and Sch. 4

## Act Notes

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- (a) The *Workplace Relations Act 1996* was amended by section 32 only of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*, subsection 2(3) of which provides as follows:
- (3) The remaining provisions of this Act (including the amendments made by Schedule 5) commence on a day or days to be fixed by Proclamation.
- (b) The *Australian Federal Police Legislation Amendment Act (No. 2) 1989* was amended by subsection 74(1) only of the *Crimes Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (c) The *Workplace Relations Act 1996* was amended by the Schedule (Parts 3, 4 and 6) only of the *Qantas Sale Act 1992*, subsections 2(2), (3)(b), (5) and (6) of which provide as follows:
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (3) A Proclamation may fix a day that is earlier than the day on which the Proclamation is published in the *Gazette* but only if:
- (b) in the case of sections 22, 23, 26, 27, 29, 32, 33, 34, 42, 45, 46, 47, 48 and 49 and Parts 3 and 4 of the Schedule—the day is not earlier than the 50% sale day; and
- (5) If, on the 100% sale day, Part 3 of the Schedule has not commenced, then, on the day on which Part 7 of the Schedule commences, Parts 3 and 6 of the Schedule are taken to have been repealed.
- (6) If a provision of this Act has not commenced before 31 August 1995, the provision is taken to have been repealed on that day.
- Parts 3 and 6 of the Schedule are taken to have been repealed on 31 August 1995.
- (d) The *Qantas Sale Act 1992* was amended by the Schedule (item 17) only of the *Qantas Sale Amendment Act 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (e) The *Workplace Relations Act 1996* was amended by Schedule 1 (items 2, 6, 7, 8–12 and 14–19) only of the *Industrial Relations Legislation Amendment Act (No. 2) 1994*, subsection 2(2) of which provides as follows:
- (2) The provisions of Schedule 1 commence as set out in item 1 of that Schedule.
- Item 1 of Schedule 1 provides as follows:
- (1) This Part of this Schedule commences on the day on which this Act receives the Royal Assent.
- (2) The provisions of Part 2 of this Schedule commence on a day or days to be fixed by Proclamation.
- (3) The Governor-General must not make a Proclamation fixing a day for the commencement of a provision of Part 2 of this Schedule unless the Governor of New South Wales has consented in writing to the provision coming into operation.
- Schedule 1 (item 7) was repealed by section 8 of the *Industrial Relations and other Legislation Amendment Act 1995* before a date was fixed for the commencement.
- (f) The *Industrial Relations Legislation Amendment Act (No. 2) 1994* was amended by Schedule 6 only of the *Industrial Relations and other Legislation Amendment Act 1995*, subsection 2(2) of which provides as follows:
- (2) The items set out in the Schedules other than Schedules 5, 7, 8, 9 and 10 commence on a day or days to be fixed by Proclamation.



**Act Notes**

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- (g) The *Workplace Relations Act 1996* was amended by sections 14 and 23 only of the *Evidence (Transitional Provisions and Consequential Amendments) Act 1995*, subsections 2(1) and (10) of which provide as follows:
- (1) This Part and Parts 2 and 3 commence on the day on which this Act receives the Royal Assent.
  - (10) Sections 21, 23 and 24 of this Act commence on the day on which section 21 of the *Evidence Act 1995* commences.
- (h) Subsection 2(5) of the *Workplace Relations and Other Legislation Amendment Act 1996* provides as follows:
- (5) Item 1 of Schedule 9 is taken to have commenced immediately before item 19 of Schedule 8 commences.
- Item 19 of Schedule 8 commenced on 31 December 1996 (see *Gazette* 1996, No. S503).
- (i) The *Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 1 (item 125) only of the *Human Rights Legislation Amendment Act (No. 1) 1999*, subsections 2(2) and (3) of which provide as follows:
- (2) The remaining sections of this Act, and the items of Schedule 1, commence on a day or days to be fixed by Proclamation.
  - (3) If a provision referred to in subsection (2) does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
- (j) Subsection 2(4) of the *Workplace Relations and Other Legislation Amendment Act (No. 2) 1996* provides as follows:
- (4) The items of Schedule 3 are taken to have commenced immediately after the *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent.
- The *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent on 25 November 1996.
- (k) The *Workplace Relations Act 1996* was amended by Schedule 1 (items 984–994) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
  - (2) Subject to this section, this Act commences at the commencing time.
- (l) The *Workplace Relations Act 1996* was amended by Schedule 2 (item 42) only of the *Timor Gap Treaty (Transitional Arrangements) Act 2000*, subsection 2(2) of which provides as follows:
- (2) Sections 3 to 7 and Schedules 1 and 2 (other than items 18 to 25 of Schedule 2) are taken to have commenced at the transition time. [see Table A]
- (m) The *Workplace Relations Act 1996* was amended by Schedule 1 (item 91) only of the *Jurisdiction of Courts Legislation Amendment Act 2000*, subsection 2(2) of which provides as follows:
- (2) The items in Schedule 1, other than items 77 to 90, commence on a day or days to be fixed by Proclamation.
- (n) The *Workplace Relations Act 1996* was amended by Schedule 3 (items 571–573) only of the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.
- (o) Subsection 2(1) (items 66 and 67) of the *Statute Law Revision Act 2002* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.
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**Act Notes**

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
66. Schedule 2, item 37	Immediately after the time specified in the <i>Workplace Relations Amendment (Termination of Employment) Act 2001</i> for the commencement of item 9 of Schedule 1 to that Act	30 August 2001
67. Schedule 2, item 38	Immediately after the time specified in the <i>Workplace Relations Amendment (Termination of Employment) Act 2001</i> for the commencement of item 11B of Schedule 1 to that Act	30 August 2001
<p>(p) The <i>Workplace Relations Act 1996</i> was amended by Schedule 1 (items 140–202) only of the <i>Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Act 2001</i>, subsections 2(1) and (8)(b) of which provide as follows:</p> <p>(1) Subject to this section, this Act commences on the day after the day on which it receives the Royal Assent.</p> <p>(8) Item 159 of Schedule 1 to this Act commences on the later of the following times:</p> <p>(b) immediately after the commencement of:</p> <p>(i) if item 28 of Schedule 12 to the <i>Workplace Relations Legislation Amendment (More Jobs, Better Pay) Act 2001</i> commences—that item; or</p> <p>(ii) if item 29 of Schedule 1 to the <i>Workplace Relations Amendment (Secret Ballots for Protected Action) Act 2001</i> commences—that item.</p> <p>The <i>Workplace Relations Legislation Amendment (More Jobs, Better Pay) Act 2001</i> and the <i>Workplace Relations Amendment (Secret Ballots for Protected Action) Act 2001</i> have not been enacted. Therefore this amendment does not commence</p> <p>(q) Subsection 2(1) (item 5) of the <i>Workplace Relations Amendment (Improved Protection for Victorian Workers) Act 2003</i> provides as follows:</p> <p>(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.</p>		
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
5. Schedule 4	The later of: (a) at the same time as the provisions covered by table item 4; and (b) immediately after the commencement of item 3 of Schedule 2 to this Act.	1 January 2004
<p>(r) Subsection 2(1) (item 24) of the <i>Statute Law Revision Act 2005</i> provides as follows:</p> <p>(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.</p>		

**Act Notes**

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<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
24. Schedule 1, items 84 and 85	Immediately after the commencement of item 1 of Schedule 1 to the <i>Workplace Relations Amendment (Fair Termination) Act 2003</i> .	27 November 2003

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**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Title .....	am. No. 60, 1996
<b>Part I</b>	
S. 1.....	am. No. 60, 1996
S. 3.....	am. No. 19, 1991; No. 215, 1992 rs. No. 98, 1993; No. 60, 1996 am. No. 119, 1999; No. 105, 2002
S. 4.....	am. No. 109, 1988 (as am. by No. 92, 1994); No. 153, 1989; No. 108, 1990; Nos. 19 and 62, 1991; No. 109, 1992 (as am. by No. 215, 1992); Nos. 98 and 109, 1993; No. 158, 1994; No. 168, 1995; No. 60, 1996; No. 198, 1997; No. 146, 1999; No. 9, 2000; No. 100, 2001; Nos. 105 and 127, 2002; No. 112, 2004; No. 112, 2005
Note to s. 4.....	ad. No. 9, 2000
S. 4A .....	ad. No. 104, 2002
S. 5.....	am. No. 153, 1989; No. 19, 1991; No. 196, 1992; No. 158, 1994; No. 168, 1995; No. 60, 1996; Nos. 9 and 57, 2000
S. 5AA.....	ad. No. 60, 1996
Heading to s. 5A .....	am. No. 25, 2000
S. 5A .....	ad. No. 37, 1990 am. No. 25, 2000 rep. No. 10, 2003
S. 6.....	am. No. 109, 1988 rs. No. 105, 2002
S. 7A .....	ad. No. 98, 1993
S. 7B .....	ad. No. 142, 2001
<b>Part IA</b>	
Part IA .....	ad. No. 153, 2005
<b>Division 1</b>	
S. 7F .....	ad. No. 153, 2005
<b>Division 2</b>	
<b>Subdivision A</b>	
Ss. 7G, 7H .....	ad. No. 153, 2005
<b>Subdivision B</b>	
Ss. 7I–7M.....	ad. No. 153, 2005
<b>Subdivision C</b>	
Ss. 7N, 7O .....	ad. No. 153, 2005
<b>Subdivision D</b>	
Ss. 7P–7X.....	ad. No. 153, 2005
<b>Subdivision E</b>	
Ss. 7Y, 7Z .....	ad. No. 153, 2005
Ss. 7ZA–7ZF.....	ad. No. 153, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 3</b>	
<b>Subdivision A</b>	
Ss. 7ZG, 7ZH .....	ad. No. 153, 2005
<b>Subdivision B</b>	
Ss. 7ZI, 7ZJ .....	ad. No. 153, 2005
<b>Subdivision C</b>	
Ss. 7ZK–7ZS .....	ad. No. 153, 2005
<b>Subdivision D</b>	
Ss. 7ZT, 7ZU .....	ad. No. 153, 2005
<b>Part II</b>	
<b>Division 1</b>	
S. 8 .....	am. No. 62, 1991; No. 98, 1993
S. 8A .....	ad. No. 105, 2002
S. 9 .....	am. No. 62, 1991; No. 98, 1993
S. 10 .....	am. No. 62, 1991; No. 98, 1993; No. 46, 1994
S. 11 .....	am. No. 62, 1991; No. 98, 1993
S. 12 .....	am. No. 52, 1992; No. 127, 2002
S. 15A .....	ad. No. 46, 1994
S. 16 .....	am. No. 46, 1994
S. 17 .....	am. No. 62, 1991; No. 98, 1993; No. 60, 1996
S. 17A .....	ad. No. 62, 1991 am. No. 98, 1993; No. 60, 1996
S. 17B .....	ad. No. 62, 1991
S. 18 .....	am. No. 62, 1991
S. 19A .....	ad. No. 62, 1991
S. 21 .....	am. No. 71, 1990; No. 62, 1991; No. 52, 1992; No. 98, 1993; No. 46, 1994; No. 127, 2002
S. 22 .....	am. No. 94, 1992; No. 64, 2003
S. 23 .....	rs. No. 52, 1992 am. No. 127, 2002
S. 26 .....	rs. No. 122, 1991 am. No. 146, 1999
S. 27 .....	am. No. 105, 2002
S. 28 .....	am. No. 122, 1991
<b>Division 2</b>	
Ss. 30–32 .....	am. No. 105, 2002
S. 33 .....	am. No. 60, 1996; No. 105, 2002
S. 35 .....	am. No. 62, 1991
S. 36 .....	am. No. 60, 1996
S. 37 .....	am. No. 60, 1996; No. 105, 2002
S. 38 .....	rs. No. 109, 1992 am. No. 98, 1993; No. 60, 1996 rep. No. 105, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 40.....	rs. No. 62, 1991 am. No. 98, 1993; No. 105, 2002
<b>Division 3</b>	
S. 43.....	am. No. 60, 1996
<b>Division 4</b>	
Heading to s. 45.....	am. No. 105, 2002
S. 45.....	am. No. 19, 1991; Nos. 109 and 179, 1992; No. 98, 1993; No. 60, 1996; No. 98, 1997; No. 133, 1999; Nos. 105 and 127, 2002; No. 137, 2003; No. 10, 2004
Note to s. 45(3) .....	ad. No. 10, 2004
S. 45A .....	ad. No. 105, 2002
S. 46.....	am. No. 60, 1996
<b>Division 5</b>	
S. 48.....	am. No. 109, 1992; No. 100, 2001; Nos. 105 and 127, 2002
S. 48A .....	ad. No. 127, 2002
Part III .....	rep. No. 98, 1993
Ss. 50–54.....	rep. No. 98, 1993
S. 55.....	am. No. 19, 1991 rep. No. 98, 1993
S. 56.....	rep. No. 98, 1993
S. 57.....	am. No. 108, 1990 rep. No. 98, 1993
Ss. 58–61 .....	rep. No. 98, 1993
<b>Part IV</b>	
<b>Division 1A</b>	
Div. 1A of Part IV .....	ad. No. 109, 1993
S. 61A .....	ad. No. 109, 1993
<b>Division 1</b>	
S. 63.....	am. No. 109, 1993; No. 105, 2002; No. 112, 2005
S. 66.....	am. No. 105, 2002; No. 112, 2005
<b>Division 2</b>	
S. 67.....	am. No. 212, 1992; No. 109, 1993; No. 105, 2002; No. 112, 2005
S. 68.....	am. No. 159, 2001
S. 72.....	rs. No. 122, 1991 am. No. 146, 1999
S. 74.....	am. No. 122, 1991
S. 75.....	am. No. 212, 1992; No. 109, 1993; No. 105, 2002; No. 112, 2005
S. 77.....	am. No. 19, 1991
Div. 2A of Part IV .....	ad. No. 212, 1992 rep. No. 158, 1994
Ss. 78A–78E .....	ad. No. 212, 1992 rep. No. 158, 1994

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 3</b>	
Ss. 81, 82.....	am. No. 105, 2002
<b>Division 4</b>	
S. 83.....	am. No. 146, 1999
<b>Part IVA</b>	
Part IVA.....	ad. No. 60, 1996
<b>Division 1</b>	
S. 83BA.....	ad. No. 60, 1996
S. 83BB.....	ad. No. 60, 1996 am. No. 105, 2002
S. 83BC.....	ad. No. 60, 1996
S. 83BD.....	ad. No. 60, 1996 am. No. 146, 1999
S. 83BE.....	ad. No. 60, 1996 am. No. 127, 2002
S. 83BF.....	ad. No. 60, 1996
<b>Division 2</b>	
S. 83BG.....	ad. No. 60, 1996 am. No. 142, 2001
S. 83BH.....	ad. No. 60, 1996 am. No. 198, 1997
Note to s. 83BH(5).....	ad. No. 112, 2004
<b>Division 3</b>	
Ss. 83BI–83BK.....	ad. No. 60, 1996
S. 83BL.....	ad. No. 60, 1996 am. No. 146, 1999
Ss. 83BM–83BQ.....	ad. No. 60, 1996
<b>Division 4</b>	
S. 83BR.....	ad. No. 60, 1996 rep. No. 77, 1996
S. 83BS.....	ad. No. 60, 1996 am. No. 198, 1997
S. 83BT.....	ad. No. 60, 1996 am. No. 198, 1997
<b>Part V</b>	
S. 84.....	am. No. 108, 1990; No. 60, 1996; No. 146, 1999
S. 86.....	am. No. 60, 1996; No. 137, 2003
Note to s. 86(2).....	ad. No. 112, 2004
<b>Part VA</b>	
Part VA.....	ad. No. 112, 2004
Ss. 88AA–88AG.....	ad. No. 112, 2004
S. 88AGA.....	ad. No. 112, 2004
Ss. 88AH, 88AI.....	ad. No. 112, 2004



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part VI</b>	
<b>Division 1A</b>	
Div. 1A of Part VI .....	ad. No. 98, 1993
S. 88A .....	ad. No. 98, 1993 rs. No. 60, 1996 am. No. 119, 1999
<b>Division 1</b>	
S. 88B .....	ad. No. 60, 1996 am. No. 119, 1999; No. 105, 2002
S. 89.....	am. No. 98, 1993; No. 60, 1996; No. 105, 2002
S. 89A .....	ad. No. 60, 1996 am. No. 7, 2001; No. 153, 2005
S. 89B .....	ad. No. 7, 2001
S. 90.....	am. No. 98, 1993; No. 105, 2002
S. 90AA.....	ad. No. 98, 1993 rep. No. 60, 1996
S. 90AB.....	ad. No. 97, 1994 rep. No. 60, 1996
S. 90A .....	ad. No. 92, 1992
S. 92A .....	ad. No. 158, 1994 rep. No. 60, 1996
Heading to s. 93.....	am. No. 40, 2004
S. 93.....	am. No. 132, 1992; No. 40, 2004
S. 93A .....	ad. No. 98, 1993
S. 94.....	rep. No. 98, 1993 ad. No. 60, 1996
S. 95.....	am. No. 109, 1992 rs. No. 98, 1993; No. 60, 1996
S. 98A .....	ad. No. 60, 1996 am. No. 105, 2002
<b>Division 2</b>	
Note to s. 99(1) .....	ad. No. 105, 2002
S. 100.....	am. No. 60, 1996
Note to s. 100(1) .....	ad. No. 105, 2002
S. 103.....	am. No. 109, 1992; No. 98, 1993; No. 60, 1996; No. 105, 2002
S. 104.....	am. No. 105, 2002
S. 106.....	am. No. 109, 1992 rs. No. 60, 1996
Ss. 108, 109.....	am. No. 109, 1992; No. 98, 1993; No. 60, 1996; No. 105, 2002
S. 110.....	am. No. 105, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 3</b>	
S. 111.....	am. Nos. 109 and 215, 1992; No. 98, 1993; No. 60, 1996; No. 105, 2002
Note to s. 111.....	ad. No. 105, 2002
S. 111AAA .....	ad. No. 60, 1996
S. 111AA.....	ad. No. 60, 1996
S. 111A .....	ad. No. 179, 1992 am. No. 60, 1996; No. 133, 1999
S. 112.....	rep. No. 109, 1992
S. 113.....	am. No. 179, 1992; No. 98, 1993; No. 60, 1996; Nos. 119 and 133, 1999
Ss. 113A, 113B .....	ad. No. 98, 1993 am. No. 60, 1996
Ss. 115–117.....	rep. No. 109, 1992
S. 118.....	rs. No. 19, 1991 rep. No. 60, 1996
Heading to s. 118A .....	rs. No. 60, 1996 rep. No. 105, 2002
S. 118A .....	ad. No. 19, 1991 am. No. 98, 1993; No. 60, 1996 rep. No. 105, 2002
S. 119.....	am. No. 105, 2002
Note to s. 119(1) .....	ad. No. 112, 2004
S. 120.....	am. No. 60, 1996
Ss. 120A, 120B .....	ad. No. 60, 1996
S. 121.....	am. No. 109, 1988 (as am. by No. 92, 1994); No. 94, 1992
S. 122.....	am. No. 19, 1991; No. 98, 1993 rep. No. 60, 1996
S. 124.....	rs. No. 60, 1996 am. No. 112, 2005
S. 125.....	rep. No. 60, 1996
S. 127.....	rs. No. 60, 1996 am. No. 11, 2004
S. 127AA.....	ad. No. 60, 1996
Ss. 127A, 127B .....	ad. No. 109, 1992 am. No. 98, 1993
S. 127C .....	ad. No. 109, 1992
S. 128.....	am. No. 60, 1996
S. 133.....	rs. No. 98, 1993
S. 134.....	am. No. 60, 1996; No. 105, 2002
Div. 3A of Part VI .....	ad. No. 109, 1992 rep. No. 98, 1993
Ss. 134A–134K .....	ad. No. 109, 1992 rep. No. 98, 1993

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 134L.....	ad. No. 109, 1992 am. No. 179, 1992 rep. No. 98, 1993
Ss. 134M, 134N .....	ad. No. 109, 1992 rep. No. 98, 1993
<b>Division 4</b>	
Ss. 135–138.....	am. No. 60, 1996
Note to s. 138(1) .....	ad. No. 112, 2004
S. 139.....	am. No. 60, 1996
<b>Division 5</b>	
S. 141.....	am. No. 137, 2003
Note to s. 141(1) .....	ad. No. 137, 2003
Ss. 141A, 141B .....	ad. No. 137, 2003
S. 142.....	am. No. 109, 1993
Ss. 142A–142C.....	ad. No. 137, 2003
<b>Division 6</b>	
S. 143.....	am. No. 98, 1993; No. 60, 1996; No. 198, 1997; No. 119, 1999
S. 143A .....	ad. No. 109, 1992 rep. No. 98, 1993
S. 145.....	am. No. 109, 1992 rs. No. 98, 1993; No. 60, 1996
S. 148.....	am. No. 60, 1996
S. 149.....	am. No. 109, 1988 (as am. by No. 92, 1994); No. 109, 1992; No. 98, 1993; No. 60, 1996
S. 150A .....	ad. No. 98, 1993 am. No. 97, 1994 rep. No. 60, 1996
Heading to s. 152.....	am. No. 60, 1996
S. 152.....	am. No. 60, 1996; No. 198, 1997; No. 100, 2001
Heading to s. 153.....	am. No. 60, 1996
S. 153.....	am. No. 60, 1996
<b>Division 7</b>	
Div. 7 of Part VI.....	rs. No. 98, 1993; No. 60, 1996
S. 156.....	rs. No. 98, 1993 am. No. 158, 1994 rs. No. 60, 1996
Ss. 157–162.....	rs. No. 98, 1993; No. 60, 1996
S. 162A .....	ad. No. 98, 1993 rep. No. 60, 1996
S. 163.....	rs. No. 98, 1993; No. 60, 1996
S. 163A .....	ad. No. 98, 1993 rep. No. 60, 1996
S. 163B .....	ad. No. 98, 1993 am. No. 158, 1994 rep. No. 60, 1996

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Ss. 163C–163Q .....	ad. No. 98, 1993 rep. No. 60, 1996
Heading to Div. 8 of Part VI .....	rep. No. 60, 1996
S. 164.....	rs. No. 98, 1993 rep. No. 60, 1996
Ss. 165, 166.....	rep. No. 60, 1996
S. 166A .....	ad. No. 98, 1993 am. No. 60, 1996
Div. 9 of Part VI .....	rep. No. 77, 1994
<b>Part VIAAA</b>	
Part VIAAA.....	ad. No. 153, 2005
S. 167.....	rep. No. 60, 1996 ad. No. 153, 2005
Ss. 168–170.....	rep. No. 77, 1994
<b>Part VIA</b>	
Part VIA.....	ad. No. 98, 1993
Div. 1 of Part VIA .....	rep. No. 60, 1996
Ss. 170AA–170AH .....	ad. No. 98, 1993 rep. No. 60, 1996
<b>Division 2</b>	
S. 170BA.....	ad. No. 98, 1993 am. No. 60, 1996
Ss. 170BB–170BG .....	ad. No. 98, 1993
S. 170BH.....	ad. No. 98, 1993 am. No. 60, 1996
S. 170BHA .....	ad. No. 60, 1996
S. 170BI .....	ad. No. 98, 1993 am. No. 127, 2002
<b>Division 3</b>	
<b>Subdivision A</b>	
Subdiv. A of Div. 3 of .....	rs. No. 60, 1996
Part VIA	
S. 170CA.....	ad. No. 98, 1993 rs. No. 60, 1996
S. 170CB.....	ad. No. 98, 1993 rs. No. 60, 1996 am. No. 76, 2003
S. 170CBA .....	ad. No. 104, 2003 am. No. 100, 2005
Heading to s. 170CC.....	rs. No. 104, 2003
S. 170CC .....	ad. No. 98, 1993 am. No. 97, 1994 rs. No. 60, 1996 am. No. 104, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 170CCA.....	ad. No. 104, 2003
S. 170CD .....	ad. No. 97, 1994 am. No. 168, 1995 rs. No. 60, 1996 am. No. 146, 1999; No. 100, 2001 (as am. by No. 63, 2002); No. 127, 2002; No. 104, 2003
<b>Subdivision B</b>	
Subdiv. B of Div. 3 of ..... Part VIA	ad. No. 60, 1996
S. 170CE.....	ad. No. 60, 1996 am. No. 198, 1997; No. 100, 2001 (as am. by No. 63, 2002)
S. 170CEAA.....	ad. No. 104, 2003
S. 170CEA .....	ad. No. 100, 2001
S. 170CF.....	ad. No. 60, 1996 am. No. 100, 2001
S. 170CFA .....	ad. No. 60, 1996
Note to s. 170CFA(1).....	ad. No. 100, 2001
S. 170CG .....	ad. No. 60, 1996 am. No. 100, 2001
S. 170CH .....	ad. No. 60, 1996 am. No. 198, 1997
S. 170CI .....	ad. No. 60, 1996
Ss. 170CIA, 170CIB.....	ad. No. 100, 2001
S. 170CJ .....	ad. No. 60, 1996 am. No. 100, 2001
<b>Subdivision C</b>	
Subdiv. C of Div. 3 of ..... Part VIA	ad. No. 60, 1996
S. 170CK.....	ad. No. 60, 1996 am. No. 76, 2003
S. 170CL.....	ad. No. 60, 1996 am. No. 100, 2001
Ss. 170CM–170CO.....	ad. No. 60, 1996
S. 170CP.....	ad. No. 60, 1996 am. No. 100, 2001
Ss. 170CQ–170CT.....	ad. No. 60, 1996
Subdiv. B of Div. 3 of ..... Part VIA	rep. No. 60, 1996
Ss. 170DA–170DD.....	ad. No. 98, 1993 rep. No. 60, 1996
S. 170DE.....	ad. No. 98, 1993 am. No. 168, 1995 rep. No. 60, 1996
Ss. 170DF, 170DG.....	ad. No. 98, 1993 rep. No. 60, 1996

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Subdiv. C of Div. 3 of ..... Part VIA	rep. No. 60, 1996
Ss. 170EA–170EC .....	ad. No. 98, 1993 rs. No. 168, 1995 rep. No. 60, 1996
Ss. 170ECA, 170ECB .....	ad. No. 168, 1995 rep. No. 60, 1996
S. 170ED .....	ad. No. 98, 1993 rs. No. 168, 1995 rep. No. 60, 1996
S. 170EDA .....	ad. No. 97, 1994 am. No. 168, 1995 rep. No. 60, 1996
S. 170EE .....	ad. No. 98, 1993 rs. No. 97, 1994 am. No. 168, 1995 rep. No. 60, 1996
Ss. 170EF–170EH .....	ad. No. 98, 1993 rep. No. 60, 1996
S. 170EHA .....	ad. No. 168, 1995 rep. No. 60, 1996
Subdiv. CA of Div. 3 of ..... Part VIA	ad. No. 97, 1994 rep. No. 60, 1996
S. 170EI .....	ad. No. 97, 1994 rep. No. 60, 1996
<b>Subdivision D</b>	
S. 170FA .....	ad. No. 98, 1993 am. No. 153, 2005
S. 170FB .....	ad. No. 98, 1993
Heading to s. 170FC .....	am. No. 60, 1996
S. 170FC .....	ad. No. 98, 1993 am. No. 60, 1996
S. 170FD .....	ad. No. 98, 1993 am. No. 60, 1996; No. 127, 2002
Note to s. 170FD .....	ad. No. 127, 2002
S. 170FE .....	ad. No. 98, 1993
<b>Subdivision E</b>	
Ss. 170GA, 170GB .....	ad. No. 98, 1993
Heading to s. 170GC .....	am. No. 60, 1996
S. 170GC .....	ad. No. 98, 1993 am. No. 60, 1996
S. 170GD .....	ad. No. 98, 1993 am. No. 60, 1996; No. 127, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note to s. 170GD .....	ad. No. 127, 2002
<b>Subdivision F</b>	
Subdiv. F of Div. 3 of ..... Part VIA	rs. No. 60, 1996
Ss. 170HA, 170HB .....	ad. No. 98, 1993 rs. No. 60, 1996
S. 170HBA .....	ad. No. 100, 2001
S. 170HC .....	ad. No. 60, 1996
<b>Subdivision G</b>	
Subdiv. G of Div. 3 of ..... Part VIA	ad. No. 100, 2001
Ss. 170HD–170HF .....	ad. No. 100, 2001
Ss. 170HH, 170HI .....	ad. No. 100, 2001
<b>Division 4</b>	
Ss. 170JA, 170JB .....	ad. No. 98, 1993
Ss. 170JC, 170JD .....	ad. No. 98, 1993 am. No. 60, 1996
S. 170JE .....	ad. No. 98, 1993
S. 170JEA .....	ad. No. 97, 1994
Ss. 170JEB, 170JEC .....	ad. No. 127, 2002
Ss. 170JF, 170JG .....	ad. No. 98, 1993 am. No. 60, 1996
S. 170JH .....	ad. No. 98, 1993
<b>Division 5</b>	
S. 170KA .....	ad. No. 98, 1993 am. No. 60, 1996
Ss. 170KB, 170KC .....	ad. No. 98, 1993
Div. 6 of Part VIA .....	rep. No. 60, 1996
S. 170KAA .....	ad. No. 98, 1993 rep. No. 60, 1996
<b>Part VIB</b>	
Part VIB .....	ad. No. 98, 1993 rs. No. 60, 1996
<b>Division 1</b>	
S. 170L .....	ad. No. 60, 1996
S. 170LA .....	ad. No. 98, 1993 rs. No. 60, 1996
S. 170LB .....	ad. No. 98, 1993 rs. No. 60, 1996 am. No. 55, 2001
S. 170LC .....	ad. No. 98, 1993 rs. No. 60, 1996
Ss. 170LD–170LG .....	ad. No. 60, 1996
<b>Division 2</b>	
Ss. 170LH–170LK .....	ad. No. 60, 1996

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 170LKA.....	ad. No. 105, 2002
Ss. 170LL, 170LM.....	ad. No. 60, 1996
<b>Division 3</b>	
Ss. 170LN–170LS.....	ad. No. 60, 1996
<b>Division 4</b>	
S. 170LT .....	ad. No. 60, 1996
S. 170LU .....	ad. No. 60, 1996 am. No. 198, 1997; No. 119, 1999; No. 127, 2002; No. 20, 2003
Ss. 170LV, 170LW .....	ad. No. 60, 1996
<b>Division 5</b>	
S. 170LX .....	ad. No. 60, 1996 am. No. 10, 2004
S. 170LY .....	ad. No. 60, 1996
S. 170LZ .....	ad. No. 60, 1996 am. No. 198, 1997
<b>Division 6</b>	
S. 170M.....	ad. No. 60, 1996
S. 170MA .....	ad. No. 98, 1993 rs. No. 60, 1996
S. 170MB .....	ad. No. 98, 1993 rs. No. 60, 1996; No. 198, 1997 am. No. 10, 2004
S. 170MBA.....	ad. No. 10, 2004
<b>Division 7</b>	
S. 170MC .....	ad. No. 98, 1993 rs. No. 60, 1996
S. 170MD .....	ad. No. 98, 1993 am. No. 97, 1994 rs. No. 60, 1996 am. No. 198, 1997; No. 20, 2003
S. 170MDA.....	ad. No. 60, 1996
S. 170ME .....	ad. No. 98, 1993 rs. No. 60, 1996
S. 170MF .....	ad. No. 98, 1993 rep. No. 60, 1996
Ss. 170MG, 170MH .....	ad. No. 98, 1993 rs. No. 60, 1996
S. 170MHA.....	ad. No. 60, 1996
<b>Division 8</b>	
S. 170MI.....	ad. No. 98, 1993 rs. No. 60, 1996
Note to s. 170MI(1) .....	am. No. 123, 2002
Ss. 170MJ–170MN .....	ad. No. 98, 1993 rs. No. 60, 1996
Ss. 170MO–170MQ .....	ad. No. 60, 1996



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 170MR .....	ad. No. 60, 1996 am. No. 105, 2002
S. 170MS .....	ad. No. 60, 1996
S. 170MT .....	ad. No. 60, 1996 am. No. 11, 2004
Note to s. 170MT .....	ad. No. 11, 2004
Ss. 170MU, 170MV .....	ad. No. 60, 1996
S. 170MW .....	ad. No. 60, 1996 am. No. 123, 2002; No. 137, 2003
Note to s. 170MW .....	ad. No. 123, 2002
S. 170MWA.....	ad. No. 123, 2002
Ss. 170MX, 170MY .....	ad. No. 60, 1996
S. 170MZ .....	ad. No. 60, 1996 am. No. 198, 1997
S. 170N .....	ad. No. 60, 1996 am. No. 198, 1997
Note to s. 170N .....	ad. No. 127, 2002
Ss. 170NA, 170NB.....	ad. No. 98, 1993 rs. No. 60, 1996
<b>Division 9</b>	
S. 170NC .....	rs. No. 60, 1996
<b>Division 10</b>	
S. 170ND .....	ad. No. 98, 1993 am. No. 97, 1994 rs. No. 60, 1996
S. 170NE.....	ad. No. 98, 1993 rs. No. 60, 1996
S. 170NF.....	ad. No. 98, 1993 rs. No. 60, 1996 am. No. 112, 2004
Ss. 170NG, 170NH .....	ad. No. 98, 1993 rs. No. 60, 1996
<b>Division 10A</b>	
Div. 10A of Part VIB .....	ad. No. 155, 2004
Ss. 170NHA, 170NHB .....	ad. No. 155, 2004
S. 170NHBA.....	ad. No. 155, 2004
S. 170NHC.....	ad. No. 155, 2004
<b>Division 11</b>	
S. 170NI .....	ad. No. 98, 1993 rs. No. 60, 1996
Ss. 170NJ–170NP .....	ad. No. 98, 1993 rep. No. 60, 1996
Ss. 170PA–170PP .....	ad. No. 98, 1993 rep. No. 60, 1996
Ss. 170QA–170QK .....	ad. No. 98, 1993 rep. No. 60, 1996

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Ss. 170RA–170RC.....	ad. No. 98, 1993 rep. No. 60, 1996
Part VIC .....	ad. No. 98, 1993 rep. No. 60, 1996
S. 170SA.....	ad. No. 98, 1993 rep. No. 60, 1996
Ss. 170TA–170TC .....	ad. No. 98, 1993 rep. No. 60, 1996
Ss. 170UA–170UE.....	ad. No. 98, 1993 rep. No. 60, 1996
<b>Part VID</b>	
Part VID .....	ad. No. 60, 1996
<b>Division 1</b>	
Ss. 170VA–170VC .....	ad. No. 60, 1996
S. 170VCA .....	ad. No. 60, 1996
<b>Division 2</b>	
Ss. 170VD, 170VE .....	ad. No. 60, 1996
<b>Division 3</b>	
Ss. 170VF–170VH .....	ad. No. 60, 1996
Ss. 170VJ–170VM .....	ad. No. 60, 1996
<b>Division 4</b>	
S. 170VN.....	ad. No. 60, 1996 am. No. 198, 1997
Ss. 170VO, 170VP .....	ad. No. 60, 1996
<b>Division 5</b>	
<b>Subdivision A</b>	
S. 170VPA .....	ad. No. 60, 1996
<b>Subdivision B</b>	
Ss. 170VPB–170VPF.....	ad. No. 60, 1996
<b>Subdivision C</b>	
S. 170VPFA .....	ad. No. 60, 1996
Ss. 170VPG–170VPI .....	ad. No. 60, 1996
<b>Subdivision D</b>	
Ss. 170VPJ, 170VPK.....	ad. No. 60, 1996
<b>Division 6</b>	
Ss. 170VQ, 170VR.....	ad. No. 60, 1996 am. No. 198, 1997
S. 170VS.....	ad. No. 60, 1996
S. 170VT .....	ad. No. 60, 1996 am. No. 198, 1997
S. 170VU.....	ad. No. 60, 1996
<b>Division 7</b>	
Ss. 170VV .....	ad. No. 60, 1996 am. No. 198, 1997; No. 112, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Ss. 170VW, 170VX, 170VZ.....	ad. No. 60, 1996
Ss. 170W, 170WA.....	ad. No. 60, 1996
<b>Division 8</b>	
Ss. 170WB–170WE .....	ad. No. 60, 1996
<b>Division 8A</b>	
Div. 8A of Part VID .....	ad. No. 155, 2004
Ss. 170WEA, 170WEB .....	ad. No. 155, 2004
<b>Division 9</b>	
Ss. 170WF, 170WG .....	ad. No. 60, 1996 am. No. 198, 1997
S. 170WH.....	ad. No. 60, 1996
S. 170WHA .....	ad. No. 60, 1996 am. No. 198, 1997
S. 170WHB .....	ad. No. 60, 1996
S. 170WHC .....	ad. No. 60, 1996 rs. No. 198, 1997
Ss. 170WHD, 170WI, 170WJ....	ad. No. 60, 1996
S. 170WK.....	ad. No. 60, 1996 rs. No. 146, 1999 am. No. 127, 2002
S. 170WKA .....	ad. No. 77, 1996
S. 170WL .....	ad. No. 60, 1996
<b>Part VIE</b>	
Part VIE.....	ad. No. 60, 1996
S. 170X .....	ad. No. 60, 1996
S. 170XA.....	ad. No. 60, 1996 am. No. 198, 1997
Ss. 170XB–170XD .....	ad. No. 60, 1996
Ss. 170XE, 170XF .....	ad. No. 60, 1996 am. No. 198, 1997
<b>Part VII</b>	
Heading to s. 174.....	am. No. 105, 2002
S. 174.....	am. No. 105, 2002
S. 174A .....	ad. No. 105, 2002
S. 176.....	am. No. 62, 1991; No. 105, 2002
S. 177.....	rep. No. 60, 1996
<b>Part VIII</b>	
<b>Division 1</b>	
Heading to Div. 1 of Part VIII ....	am. No. 109, 1992
S. 177A .....	ad. No. 109, 1992 am. No. 127, 2002
S. 178.....	am. No. 108, 1990; No. 109, 1992; No. 98, 1993; No. 60, 1996; Nos. 105 and 127, 2002; No. 112, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 179.....	rs. No. 108, 1990 am. No. 109, 1992; No. 60, 1996
S. 179A .....	ad. No. 108, 1990
S. 179B .....	ad. No. 108, 1990 am. No. 98, 1993
Ss. 179C, 179D.....	ad. No. 109, 1992
S. 180.....	am. No. 60, 1996
Div. 2 of Part VIII.....	rep. No. 60, 1996
Ss. 181–186.....	rep. No. 60, 1996
<b>Division 3</b>	
S. 187.....	am. No. 105, 2002
<b>Part VIIIA</b>	
Part VIIIA.....	ad. No. 60, 1996
Ss. 187AA–187AC .....	ad. No. 60, 1996
S. 187AD.....	ad. No. 60, 1996 am. No. 112, 2004
<b>Part IX</b>	
Heading to Part IX.....	rs. No. 105, 2002
Div. 1A of Part IX .....	ad. No. 98, 1993 rep. No. 105, 2002
S. 187A .....	ad. No. 98, 1993 am. No. 60, 1996 rep. No. 105, 2002
Div. 1 of Part IX .....	rep. No. 105, 2002
S. 187B .....	ad. No. 60, 1996 rep. No. 105, 2002
S. 188.....	am. No. 109, 1992; No. 60, 1996 rep. No. 105, 2002
S. 189.....	am. No. 19, 1991; No. 98, 1993; No. 60, 1996 rep. No. 105, 2002
S. 190.....	rep. No. 105, 2002
S. 191.....	am. No. 19, 1991 rep. No. 105, 2002
S. 192.....	rep. No. 105, 2002
S. 193.....	rs. No. 19, 1991 am. No. 109, 1992 rep. No. 98, 1993
S. 193A .....	ad. No. 19, 1991 am. No. 109, 1992 rep. No. 98, 1993
Div. 2 of Part IX .....	rep. No. 105, 2002
S. 194.....	rep. No. 105, 2002
S. 195.....	am. No. 109, 1992; No. 60, 1996 rep. No. 105, 2002
S. 196.....	am. No. 60, 1996 rep. No. 105, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 197.....	rep. No. 105, 2002
S. 198.....	am. No. 60, 1996 rep. No. 105, 2002
Ss. 199–201.....	rep. No. 105, 2002
S. 202.....	am. No. 62, 1991 rs. No. 215, 1992 rep. No. 105, 2002
S. 203.....	rep. No. 105, 2002
S. 203A.....	ad. No. 60, 1996 rep. No. 105, 2002
S. 204.....	am. No. 108, 1990; No. 98, 1993; No. 60, 1996 rep. No. 105, 2002
S. 205.....	am. No. 60, 1996 rep. No. 105, 2002
Ss. 206, 207.....	rep. No. 105, 2002
Div. 3 of Part IX.....	rep. No. 105, 2002
Ss. 208, 209.....	rep. No. 105, 2002
Div. 4 of Part IX.....	rep. No. 105, 2002
Ss. 210, 211.....	am. No. 108, 1990 rep. No. 105, 2002
S. 212.....	rep. No. 105, 2002
S. 213.....	am. No. 108, 1990 rep. No. 105, 2002
S. 214.....	am. No. 142, 2001 rep. No. 105, 2002
Ss. 215–217.....	rep. No. 105, 2002
Div. 5 of Part IX.....	rep. No. 105, 2002
Ss. 218–226.....	rep. No. 105, 2002
Div. 6 of Part IX.....	rep. No. 105, 2002
Ss. 227–232.....	rep. No. 105, 2002
Div. 7 of Part IX.....	rs. No. 19, 1991 rep. No. 105, 2002
S. 233.....	rs. No. 19, 1991 rep. No. 60, 1996
S. 234.....	rs. No. 19, 1991 am. No. 55, 2001 rep. No. 105, 2002
S. 235.....	rs. No. 19, 1991 rep. No. 105, 2002
S. 236.....	rs. No. 19, 1991 am. No. 60, 1996 rep. No. 105, 2002
Ss. 237–251.....	rs. No. 19, 1991 rep. No. 105, 2002
S. 252.....	rs. No. 19, 1991 am. No. 60, 1996 rep. No. 105, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 253.....	rs. No. 19, 1991 rep. No. 105, 2002
S. 253A .....	ad. No. 19, 1991 am. No. 60, 1996 rep. No. 105, 2002
Ss. 253B–253H.....	ad. No. 19, 1991 rep. No. 105, 2002
Ss. 253J–253N, 253P .....	ad. No. 19, 1991 rep. No. 105, 2002
S. 253Q.....	ad. No. 19, 1991 am. No. 60, 1996 rep. No. 105, 2002
Ss. 253R, 253S.....	ad. No. 19, 1991 rep. No. 105, 2002
Heading to s. 253T.....	am. No. 60, 1996 rep. No. 105, 2002
S. 253T .....	ad. No. 19, 1991 am. No. 60, 1996 rep. No. 105, 2002
S. 253TA .....	ad. No. 215, 1992 rep. No. 105, 2002
Ss. 253U–253Z .....	ad. No. 19, 1991 rep. No. 105, 2002
Ss. 253ZA–253ZG .....	ad. No. 19, 1991 rep. No. 105, 2002
Div. 7A of Part IX .....	ad. No. 60, 1996 rep. No. 105, 2002
S. 253ZH.....	ad. No. 60, 1996 rep. No. 105, 2002
Ss. 253ZI, 253ZJ.....	ad. No. 60, 1996 am. No. 198, 1997 rep. No. 105, 2002
Ss. 253ZJA–253ZJD.....	ad. No. 198, 1997 rep. No. 105, 2002
S. 253ZK.....	ad. No. 60, 1996 rep. No. 105, 2002
Ss. 253ZL, 253ZM .....	ad. No. 60, 1996 am. No. 198, 1997 rep. No. 105, 2002
Ss. 253ZN–253ZQ .....	ad. No. 60, 1996 rep. No. 105, 2002
S. 253ZQA .....	ad. No. 198, 1997 rep. No. 105, 2002
Ss. 253ZR–253ZV .....	ad. No. 60, 1996 rep. No. 105, 2002
Ss. 253ZW, 253ZX.....	ad. No. 198, 1997 rep. No. 105, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Div. 8 of Part IX .....	rep. No. 105, 2002
Ss. 254–260 .....	rep. No. 105, 2002
Div. 9 of Part IX .....	rep. No. 105, 2002
S. 261.....	am. No. 109, 1992 rep. No. 105, 2002
Ss. 262, 263 .....	rep. No. 105, 2002
S. 264.....	am. No. 98, 1993; No. 60, 1996 rep. No. 105, 2002
S. 264A .....	ad. No. 60, 1996 rep. No. 105, 2002
Ss. 265–267 .....	rep. No. 105, 2002
Div. 10 of Part IX .....	rep. No. 105, 2002
Ss. 268, 269 .....	rep. No. 105, 2002
Div. 11 of Part IX .....	rep. No. 105, 2002
S. 270 .....	rep. No. 105, 2002
S. 271.....	am. No. 60, 1996 rep. No. 105, 2002
S. 271A .....	ad. No. 60, 1996 rep. No. 105, 2002
Ss. 272–274 .....	rep. No. 105, 2002
S. 275.....	am. No. 142, 2001 rep. No. 105, 2002
Ss. 276–279 .....	rep. No. 105, 2002
S. 280.....	am. No. 60, 1996 rep. No. 105, 2002
Ss. 280A, 280B .....	ad. No. 60, 1996 rep. No. 105, 2002
S. 281.....	am. No. 60, 1996 rep. No. 105, 2002
Ss. 282–284 .....	rep. No. 105, 2002
S. 285.....	am. No. 60, 1996 rep. No. 105, 2002
Heading to Div. 11A of..... Part IX	rep. No. 105, 2002
Div. 11A of Part IX .....	ad. No. 60, 1996 rep. No. 105, 2002
S. 285A .....	ad. No. 60, 1996
S. 285B .....	ad. No. 60, 1996 am. No. 198, 1997
S. 285C .....	ad. No. 60, 1996 am. No. 105, 2002
Note to s. 285C(7).....	am. No. 105, 2002
Ss. 285D, 285E.....	ad. No. 60, 1996
S. 285F .....	ad. No. 60, 1996 am. No. 112, 2004
S. 285G.....	ad. No. 60, 1996

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Div. 12 of Part IX .....	rep. No. 105, 2002
S. 286.....	rep. No. 60, 1996
Ss. 287–289.....	rep. No. 105, 2002
S. 290.....	am. No. 60, 1996 rep. No. 105, 2002
S. 291.....	rep. No. 105, 2002
S. 291A .....	ad. No. 60, 1996 rep. No. 105, 2002
S. 292.....	rep. No. 105, 2002
S. 293.....	rs. No. 109, 1993 rep. No. 105, 2002
Part X.....	rep. No. 105, 2002
Ss. 294, 295.....	am. No. 60, 1996 rep. No. 105, 2002
S. 296.....	am. No. 109, 1992; No. 98, 1993; No. 60, 1996 rep. No. 105, 2002
S. 297.....	rep. No. 105, 2002
S. 298.....	am. No. 60, 1996 rep. No. 105, 2002
<b>Part XA</b>	
Part XA.....	ad. No. 60, 1996
<b>Division 1</b>	
S. 298A .....	ad. No. 60, 1996
S. 298B .....	ad. No. 60, 1996 am. No. 198, 1997; No. 105, 2002; No. 20, 2003
<b>Division 2</b>	
Heading to s. 298C .....	am. No. 20, 2003
S. 298C .....	ad. No. 60, 1996 am. No. 20, 2003
Ss. 298D, 298E.....	ad. No. 60, 1996
Heading to s. 298F.....	rs. No. 105, 2002
S. 298F .....	ad. No. 60, 1996 am. No. 105, 2002
S. 298G .....	ad. No. 60, 1996 am. No. 127, 2002
Ss. 298H, 298J .....	ad. No. 60, 1996
<b>Division 3</b>	
S. 298K .....	ad. No. 60, 1996
S. 298L.....	ad. No. 60, 1996 am. No. 20, 2003
S. 298M.....	ad. No. 60, 1996
<b>Division 4</b>	
S. 298N .....	ad. No. 60, 1996
<b>Division 5</b>	
S. 298P .....	ad. No. 60, 1996



**Table of Amendments**

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Provision affected	How affected
S. 298Q .....	ad. No. 60, 1996 am. No. 20, 2003
S. 298R .....	ad. No. 60, 1996 am. No. 127, 2002
S. 298S .....	ad. No. 60, 1996 am. No. 20, 2003
Ss. 298SA, 298SB .....	ad. No. 20, 2003
S. 298SBA .....	ad. No. 20, 2003
<b>Division 5A</b>	
Div. 5A of Part XA .....	ad. No. 20, 2003
S. 298SC .....	ad. No. 20, 2003
<b>Division 6</b>	
S. 298T .....	ad. No. 60, 1996
S. 298U .....	ad. No. 60, 1996 am. No. 112, 2004
S. 298V .....	ad. No. 60, 1996
<b>Division 7</b>	
Ss. 298W, 298X .....	ad. No. 60, 1996
Heading to s. 298Y .....	am. No. 20, 2003
S. 298Y .....	ad. No. 60, 1996 am. No. 20, 2003
Heading to s. 298Z .....	am. No. 20, 2003
S. 298Z .....	ad. No. 198, 1997 am. No. 20, 2003
<b>Part XI</b>	
S. 299 .....	am. No. 215, 1992; No. 142, 2001; No. 112, 2004
Ss. 300–302 .....	am. No. 112, 2004
Heading to s. 303 .....	am. No. 112, 2004
Subhead. to s. 303(1) .....	ad. No. 112, 2004
S. 303 .....	am. No. 142, 2001; No. 112, 2004
S. 304 .....	am. No. 60, 1996 rep. No. 137, 2000
S. 304A .....	ad. No. 60, 1996 rep. No. 137, 2000
S. 305 .....	am. No. 60, 1996 rs. No. 137, 2000 am. No. 142, 2001; No. 137, 2003
S. 305A .....	ad. No. 60, 1996 rs. No. 137, 2000 am. No. 142, 2001
S. 306 .....	am. No. 60, 1996 rep. No. 137, 2000
Ss. 307, 308 .....	am. No. 142, 2001; No. 112, 2004
S. 309 .....	rep. No. 60, 1996
S. 310 .....	rep. No. 142, 2001

**Table of Amendments**

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Provision affected	How affected
Ss. 311, 312.....	rep. No. 98, 1993
S. 313.....	rs. No. 142, 2001 rep. No. 105, 2002
S. 314.....	rep. No. 105, 2002
S. 315.....	am. No. 142, 2001 rep. No. 105, 2002
S. 316.....	rep. No. 105, 2002
S. 317.....	am. No. 19, 1991; No. 142, 2001; Nos. 105 and 127, 2002; No. 112, 2004
S. 318.....	am. No. 19, 1991 rep. No. 105, 2002
S. 319.....	am. No. 142, 2001 rep. No. 105, 2002
S. 320.....	rep. No. 60, 1996
Ss. 321–323.....	am. No. 142, 2001 rep. No. 105, 2002
S. 324.....	rep. No. 142, 2001
Ss. 325–328.....	am. No. 142, 2001 rep. No. 105, 2002
S. 329.....	am. No. 60, 1996; No. 142, 2001 rep. No. 105, 2002
Ss. 330–333.....	am. No. 142, 2001 rep. No. 105, 2002
S. 334.....	am. No. 109, 1992; No. 98, 1993 rep. No. 60, 1996
S. 334A .....	ad. No. 98, 1993 rep. No. 60, 1996
Ss. 335, 336.....	am. No. 109, 1992 rep. No. 60, 1996
S. 337.....	rs. No. 142, 2001 rep. No. 105, 2002
S. 338.....	am. No. 60, 1996; No. 112, 2004
S. 339.....	rs. No. 142, 2001 am. No. 112, 2004
S. 340.....	am. No. 142, 2001 rep. No. 105, 2002
S. 341.....	rep. No. 109, 1993
<b>Part XII</b>	
Heading to Part XII.....	rs. No. 105, 2002
Div. 1 of Part XII.....	rep. No. 105, 2002
Ss. 342–346.....	rep. No. 105, 2002
<b>Division 2</b>	
S. 347.....	am. No. 60, 1996
<b>Part XIII</b>	
Ss. 349, 350.....	am. No. 112, 2005
S. 352.....	am. No. 112, 2005

**Table of Amendments**

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Provision affected	How affected
S. 353A .....	ad. No. 108, 1990 am. No. 109, 1992; No. 60, 1996
Note to s. 355(5) .....	ad. No. 112, 2004
S. 356.....	am. No. 98, 1993; No. 60, 1996; No. 8, 2005
S. 357.....	am. No. 108, 1990; No. 98, 1993; No. 60, 1996; No. 112, 2005
S. 358.....	am. No. 52, 1992; No. 104, 1993; No. 127, 2002
S. 358A .....	ad. No. 60, 1996
S. 359.....	am. No. 60, 1996; No. 105, 2002
Heading to Part XIV .....	rep. No. 60, 1996
Part XIV.....	ad. No. 98, 1993 rep. No. 60, 1996
Div. 1 of Part XIV .....	rep. No. 60, 1996
S. 360.....	ad. No. 98, 1993 am. No. 98, 1993 rep. No. 60, 1996
Div. 2 of Part XIV .....	rep. No. 60, 1996
Ss. 361–374.....	ad. No. 98, 1993 rep. No. 60, 1996
Div. 3 of Part XIV .....	rep. No. 60, 1996
S. 375.....	ad. No. 98, 1993 rep. No. 60, 1996
S. 376.....	ad. No. 98, 1993 am. No. 168, 1995 rep. No. 60, 1996
Ss. 377–388.....	ad. No. 98, 1993 rep. No. 60, 1996
Div. 4 of Part XIV .....	rep. No. 60, 1996
Ss. 389–411 .....	ad. No. 98, 1993 rep. No. 60, 1996
Heading to Div. 5 of Part XIV ....	rep. No. 60, 1996
<b>Part XIV</b>	
Heading to Part XIV .....	ad. No. 60, 1996
Heading to Subdiv. A of ..... Div. 5 of Part XIV	ad. No. 98, 1993 rep. No. 60, 1996
<b>Division 1</b>	
Heading to Div. 1 of Part XIV ....	ad. No. 60, 1996
S. 412.....	ad. No. 98, 1993 am. No. 60, 1996
S. 413.....	ad. No. 98, 1993
S. 413A .....	ad. No. 60, 1996
S. 414.....	ad. No. 98, 1993 am. No. 105, 2002
S. 415.....	ad. No. 98, 1993 am. No. 60, 1996; No. 105, 2002; No. 62, 2004

**Table of Amendments**

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Provision affected	How affected
S. 416.....	ad. No. 98, 1993 am. No. 60, 1996
Ss. 417–419.....	ad. No. 98, 1993 rep. No. 60, 1996
Heading to Subdiv. B of Div. 5 of Part XIV	rep. No. 60, 1996
<b>Division 2</b>	
Heading to Div. 2 of Part XIV ....	ad. No. 60, 1996
S. 420.....	ad. No. 98, 1993 rep. No. 60, 1996
S. 421.....	ad. No. 98, 1993 rs. No. 60, 1996 rep. No. 105, 2002
S. 422.....	ad. No. 98, 1993 am. No. 112, 2005
Ss. 423–428.....	ad. No. 98, 1993 rep. No. 60, 1996
Subdiv. C of Div. 5 of Part XIV	rep. No. 60, 1996
Ss. 429–431.....	ad. No. 98, 1993 rep. No. 60, 1996
Subdiv. D of Div. 5 of Part XIV	rep. No. 60, 1996
S. 432.....	ad. No. 98, 1993 rep. No. 60, 1996
Div. 6 of Part XIV .....	rep. No. 60, 1996
Ss. 433–463.....	ad. No. 98, 1993 rep. No. 60, 1996
Div. 7 of Part XIV .....	rep. No. 60, 1996
Ss. 464–468.....	ad. No. 98, 1993 rep. No. 60, 1996
Heading to Div. 8 of Part XIV ....	rep. No. 60, 1996
<b>Division 3</b>	
Heading to Div. 3 of Part XIV ....	ad. No. 60, 1996
S. 469.....	ad. No. 98, 1993 am. No. 60, 1996; No. 105, 2002; No. 112, 2005
Ss. 470, 471.....	ad. No. 98, 1993 am. No. 105, 2002; No. 112, 2005
Div. 9 of Part XIV .....	rep. No. 60, 1996
Ss. 472, 473.....	ad. No. 60, 1996 rep. No. 60, 1996
S. 474.....	ad. No. 98, 1993 am. No. 3, 1995 rep. No. 60, 1996
Ss. 475–485.....	ad. No. 98, 1993 rep. No. 60, 1996

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Provision affected	How affected
Div. 10 of Part XIV .....	rep. No. 60, 1996
Ss. 486, 487 .....	ad. No. 98, 1993 rep. No. 60, 1996
<b>Part XV</b>	
Part XV .....	ad. No. 77, 1996
<b>Division 1</b>	
Ss. 488, 489 .....	ad. No. 77, 1996
<b>Division 2</b>	
Ss. 490–493 .....	ad. No. 77, 1996
S. 493A .....	ad. No. 137, 2003
S. 494 .....	ad. No. 77, 1996 am. No. 198, 1997; No. 10, 2004
S. 495 .....	ad. No. 77, 1996 am. No. 198, 1997
S. 496 .....	ad. No. 77, 1996
<b>Division 3</b>	
<b>Subdivision A</b>	
Ss. 497–499 .....	ad. No. 77, 1996
<b>Subdivision B</b>	
S. 500 .....	ad. No. 77, 1996
S. 501 .....	ad. No. 77, 1996 am. No. 137, 2003
Note to s. 501(1) .....	ad. No. 137, 2003
S. 501A .....	ad. No. 137, 2003
Ss. 502, 503 .....	ad. No. 77, 1996 am. No. 137, 2003
Ss. 504, 505 .....	ad. No. 77, 1996
Heading to s. 506 .....	rs. No. 137, 2003
S. 506 .....	ad. No. 77, 1996 am. No. 137, 2003
S. 507 .....	ad. No. 77, 1996
S. 508 .....	ad. No. 77, 1996 am. No. 137, 2003
S. 509 .....	ad. No. 77, 1996
S. 509A .....	ad. No. 137, 2003
<b>Subdivision C</b>	
Ss. 510–513 .....	ad. No. 77, 1996
<b>Subdivision D</b>	
Heading to Subdiv. D of ..... Div. 3 of Part XV	rs. No. 137, 2003
S. 514 .....	ad. No. 77, 1996 rs. No. 137, 2003
<b>Subdivision E</b>	
Ss. 515–531 .....	ad. No. 77, 1996

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Provision affected	How affected
S. 532.....	ad. No. 77, 1996 rep. No. 137, 2003
<b>Subdivision F</b>	
S. 533.....	ad. No. 77, 1996 am. No. 137, 2003
S. 534.....	ad. No. 77, 1996
<b>Division 4</b>	
Ss. 535, 536.....	ad. No. 77, 1996
<b>Part XVI</b>	
Part XVI.....	ad. No. 137, 2003
<b>Division 1</b>	
Ss. 537, 538.....	ad. No. 137, 2003
<b>Division 2</b>	
<b>Subdivision A</b>	
Ss. 539, 540.....	ad. No. 137, 2003
S. 540A .....	ad. No. 137, 2003
<b>Subdivision B</b>	
S. 541.....	ad. No. 137, 2003 am. No. 137, 2003
<b>Subdivision C</b>	
S. 542.....	ad. No. 137, 2003
<b>Subdivision D</b>	
Ss. 543–549.....	ad. No. 137, 2003
<b>Part XVII</b>	
Part XVII.....	ad. No. 153, 2005
<b>Division 1</b>	
S. 550.....	ad. No. 153, 2005
<b>Division 2</b>	
S. 551.....	ad. No. 153, 2005
<b>Division 3</b>	
Ss. 552–554.....	ad. No. 153, 2005
<b>Division 4</b>	
Ss. 555–557.....	ad. No. 153, 2005
<b>Division 5</b>	
S. 558.....	ad. No. 153, 2005
<b>Schedule 1A</b>	
Schedule 1A.....	ad. No. 77, 1996 am. No. 137, 2003
<b>Schedule 1B</b>	
Schedule 1B.....	ad. No. 104, 2002 am. No. 62, 2004; No. 112, 2004

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Provision affected	How affected
<b>Chapter 7</b>	
<b>Part 4</b>	
<b>Division 2</b>	
S. 213 .....	am. No. 112, 2004
S. 213A .....	ad. No. 112, 2004
Ss. 214–217 .....	am. No. 112, 2004
<b>Chapter 11</b>	
<b>Part 1</b>	
S. 317 .....	am. No. 112, 2004
<b>Part 4A</b>	
Part 4A .....	ad. No. 112, 2004
Ss. 337A–337D .....	ad. No. 112, 2004
<b>Part 5</b>	
S. 340 .....	am. No. 62, 2004
<b>Schedule 1</b>	
Heading to Schedule 1 .....	am. No. 60, 1996
Schedule 1 .....	am. No. 153, 1989; No. 108, 1990; No. 9, 2000
Schedule 3 .....	rep. No. 105, 2002
Schedule 4 .....	am. No. 109, 1992; No. 109, 1993 rep. No. 105, 2002
Schedules 5–9 .....	ad. No. 98, 1993 rep. No. 60, 1996
<b>Schedule 10</b>	
Schedule 10 .....	ad. No. 98, 1993
Schedule 11 .....	ad. No. 98, 1993 rep. No. 60, 1996
<b>Schedule 12</b>	
Schedule 12 .....	ad. No. 98, 1993
Schedule 13 .....	ad. No. 98, 1993 rep. No. 60, 1996
<b>Schedule 14</b>	
Schedule 14 .....	ad. No. 98, 1993
Schedules 15, 16 .....	ad. No. 98, 1993 rep. No. 60, 1996